

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF AND APPENDIX FOR APPELLANT

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

April Term, 1942

No. 8132

892

J. R. BEATON COMPANY, INC., a corporation,
Appellant

vs.

MAY BERBERICH, JOSEPH A. BERBERICH, MARY
CATHERINE LINDENEAU, *Appellees*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

ARTHUR J. HILLAND
DEWITT S. HYDE
Attorneys for Appellant
Shoreham Building
Washington, D. C.

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CATHERINE LINDENEAU, *Appellees.*

BRIEF FOR APPELLANT.

Jurisdictional Statement.

The District Court had jurisdiction under Sections 11-306 and 11-325 and this Court has jurisdiction under Section 17-101 of the District of Columbia Code, 1940 Edition. The complaint was a so-called "Judgment Creditors Bill" for discovery and to set aside fraudulent conveyances. (Appellant's App. 1-14.)

Statement of the Case.

This is an appeal from a judgment of the District Court of the United States for the District of Columbia, among other things, dismissing the appellant's bill of complaint, *at the close of appellant's evidence*, the Court having ruled that the appellant's evidence did not make out a *prima facie* case. (Appellant's App. 25 and 88.)

Parties.

Appellant is a judgment creditor of the appellee, Joseph A. Berberich. (Appellant's App. 2, 16 and 32.) Appellee, May Berberich, is a sister and appellee, Mary Catherine Lindeneau, a daughter of the judgment debtor, appellee Joseph A. Berberich, and they are the persons to whom the fraudulent conveyances were made. (Appellant's App. 2 and 32.)

The Complaint.

By its complaint, appellant sought to reach three specific assets of the judgment debtor, appellee Joseph A. Berberich, or so much thereof as is necessary to satisfy appellant's judgment. These assets were: (1) the real estate known as 1801 Kenyon Street, Northwest, District of Columbia, (Appellant's App. 3-5), (2) the rents from twelve pieces of real estate described in paragraph 7 of the complaint, in which the appellee Joseph A. Berberich has an estate by courtesy (Appellant's App. 5-8), and (3) part of his distributive share of the estate of his father, Robert Berberich, which part amounted to about \$3,000.00 cash. (Appellant's App. 8-10 and 85.)

The Evidence.

So much of the evidence is pertinent in connection with our argument that we have set it forth there in some detail rather than in this statement. Briefly, the evidence showed that all the judgment debtor's property discovered by the appellant, namely, the three above-mentioned assets, found its way into the hands of his daughter, appellee Mary Catherine Lindeneau. The real estate at 1801 Kenyon Street, Northwest, first passed through the name of his sister, appellee May Berberich, and was transferred by her to his daughter without consideration. The transfers of this property were admitted. (Appellant's App. 14 and Tr. 16, 24 and 30.) The transfers of the rents from the twelve pieces of real estate described in paragraph 7 of the complaint, in which the judgment debtor has an estate by curtesy, were shown by the records of the real estate agents who collected the rent, bank records and testimony of the agents, judgment debtor, and another of his daughters, Rose Duckett. (Appellant's App. 43-87.) The transfer of \$2,998.00 cash of the judgment debtor's distributive share of the estate of his father was proved by the testimony of Scott M. Birdsong, an employee of Washington Permanent Building Association, the Association's records and the testimony of the judgment debtor. (Appellant's App. 41-43 and 85.)

It was admitted that at the times of the transfers of these assets, the judgment debtor was in financial difficulties and had no other assets. (Appellant's App. 32.) The answers of the appellees May Berberich and Mary Catherine Lindeneau show they knew, at the times of the transfers of the financial difficulties of the judgment debtor. (Tr. 16 and 30.)

There was no evidence to show that the transfers were for a consideration, other than the testimony of the judgment debtor that the sum of \$2,498.00 from his distributive share of his father's estate was paid to his daughter for monies advanced by her for the treatment of one of his sons who went to New Mexico for his health, and that \$500.00 of his distributive share of that estate transferred to his sister, appellee May Berberich, was for monies advanced by her in connection with the illness of another son. (Appellant's App. 85.) This testimony of the judgment debtor was not supported by any evidence to show when or in what amounts his daughter and sister made advances for the illnesses of the two sons, and he testified that he did not have any records showing the amounts advanced by his daughter or his sister, that he did not remember when they were advanced, and that he did not receive any kind of a receipt or release from either his daughter or his sister. (Appellant's App. 85-86.) Appellees May Berberich, Mary Catherine Lindeneau did not testify.

A review of the written records introduced in evidence, which have been set forth in condensed form in the statement of evidence, will disclose that the judgment debtor received substantial benefits from these assets after the transfers of them to his sister and daughter. (Appellant's App. 31-87.)

The Court's Rulings.

Before resting appellant's case, counsel for appellant submitted to the Court a list of the documentary proof that he had offered and the Court had received in evidence. Appellant had not offered and there had not been received

in evidence certain tax deeds and the record in another equity case in which appellant had been named a party defendant but had not been served with process and had not answered, but the Trial Court stated that he had examined the tax deeds and the record in the other equity case and "the Court would consider them anyway." Counsel for appellant objected on the grounds that the documents in question had not been offered in evidence by appellant; that the statements made in the equity case were not binding on appellant and were not competent evidence, and appellant's rights could not be prejudiced by anything stated in pleadings filed by other parties to the equity proceedings in which appellant had never been served with process. (Appellant's App. 87.) The record in the equity case and the tax deeds are in the statement of evidence. (Appellant's App. 87 and Tr. 94 and 114.)

Thereupon, appellant rested its case and counsel for appellees made a motion to dismiss the action and the Court granted the motion over the objection of counsel for appellant on the grounds that appellant's evidence made out a *prima facie* case; that the Court's ruling was made on evidence not offered by appellant; that the evidence of the transactions between the appellees was replete with badges of fraud, which had been called to the attention of the Court; that the judgment debtor could not have been divested of his estate by curtesy in the twelve properties described in paragraph 7 of the complaint, except by deed or judicial decree, and there had been no deed or judicial decree; that the evidence did not show waste on the part of the life tenant, the judgment debtor; that the tax deeds did not divest him of his estate by courtesy; that the tax deeds did not create in the remainderman, appellee Mary Catherine Lindeneau, any greater estate than she already

had, and her acquisition of the tax deeds should be construed as nothing more than her method of paying the taxes; that if the tax deeds divested the judgment debtor of his estate by courtesy, they also divested the other remaindermen of their remainder interest; that the tax deeds had been acquired in part with rents received by the appellee Mary Catherine Lindeneau and for other reasons which had appeared in the argument of counsel for appellant in opposition to the motion to dismiss. (Appellant's App. 88.)

Thereafter, the Court entered findings of fact, conclusions of law and a final judgment. (Appellant's App. 15-28.)

Appellant objected to the Court's findings, conclusions of law and final judgment, among others, on the grounds that the evidence did not support the findings and they were erroneous in other respects. (Appellant's App. 25, and 28.) Appellant also filed a motion for a new trial and to amend the findings of fact and conclusions of law, which motion was overruled. (Appellant's App. 28-30.)

Statute Involved.

Section 12-401 of the District of Columbia Code, 1940 Edition, provides as follows:

“Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: Provided, That nothing herein

shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: Provided further, That the question of fraudulent intent shall be deemed a question of fact and not of law."

Statement of Points.

- 1—Appellant's evidence made out a *prima facie* case.
- 2—The Court's findings, conclusions of law and judgment were based on evidence not offered by appellant and not competent.
- 3—Appellee Joseph A. Berberich could not be divested of his estate by curtesy, except by deed or judicial decree.
- 4—The tax deeds did not divest appellee Joseph A. Berberich of his estate by curtesy and such deeds did not create in appellee Mary Catherine Lindeneau any greater estate than she already had as one of the remaindermen.
- 5—The evidence did not show waste on the part of the life tenant, appellee Joseph A. Berberich.
- 6—The evidence does not support the findings of fact and they as well as the conclusions of law and judgment are improper in other respects.

Summary of Argument.

- 1—Appellant proved a *prima facie* case. A reading of the evidence will disclose that every allegation of the complaint was proved by an abundance of credible evidence.

The Trial Court did not find that any part of the evidence was unworthy of belief.

In this class of cases, there are three main issues, (1) the debtor's fraudulent intent, (2) payment of a valuable consideration by the transferee, and (3) the transferee's knowledge of the debtor's fraudulent intent. As to the first issue, the burden of proof was on the appellant, as to the second issue, it was on the appellees, and as to the third, it was on the appellant. These are the issues created by the applicable statute. Proof of the judgment debtor's fraudulent intent makes out a *prima facie* case. The transferee's knowledge of the debtor's fraudulent intent does not become an issue until the transferee has proved payment of a valuable consideration.

Appellant proved the fraudulent intent of the judgment debtor, appellee Joseph A. Berberich, by many facts and circumstances shown in the evidence. The evidence of the transactions between the judgment debtor, his sister and daughter is replete with badges of fraud, familiar in this class of cases. In our argument, we have pointed out many of these badges of fraud. A reading of the record will leave no doubt in the Court's mind as to the fraudulent intent on the part of the judgment debtor.

The evidence is reviewed in our argument. The evidence not only proved the judgment debtor's fraudulent intent, but went further and showed knowledge on the part of the appellees, May Berberich and Mary Catherine Lindeneau, of the judgment debtor's fraudulent intent. In fact, it showed they actively participated in the fraud. The evidence on both these issues, *i. e.*, the debtor's fraudulent intent and the transferees' knowledge thereof, was so con-

clusive that it would have entitled appellant to a judgment even if the appellees had been required by the Trial Court to put in their evidence and they had proved payment of a valuable consideration, because payment of a valuable consideration is not a defense if the transferees had knowledge of the fraudulent intent of the judgment debtor.

The transactions between the judgment debtor, his sister and daughter, which occurred while he was in financial difficulties, should be viewed with grave suspicions and closely scrutinized. The transfer of the Kenyon Street property and the tax sales of the twelve properties in which the judgment debtor had an estate by curtesy were made to appear as involuntary transfers, but the evidence shows that they were, in fact, voluntary transfers and that the judgment debtor received the benefits of the properties after the transfers. In other words, the transfers were involuntary only in form and there was a reservation of benefits to the judgment debtor. The transfers were involuntary in form because that was the only way the transfers could have been made, the properties being subject to judgment liens at the time the transfers occurred.

The natural and probable consequences of the transactions between the judgment debtor, his sister and daughter was to, and they did, hinder, delay and defraud appellant, and the judgment debtor must be held to have so intended, within the meaning of Section 12-401 of the District of Columbia Code, 1940 Edition.

The Trial Court erred in dismissing the action at the close of appellant's evidence.

2—The Trial Court erred in basing its findings of fact, conclusions of law and judgment, in part, on tax deeds from

the District of Columbia to appellee Mary Catherine Lindeneau, and on the record in another equity case in which appellant was named as a defendant but never served with process. These documents were not offered in evidence and were not a part of appellant's evidence. The record in the equity case was not even competent evidence against appellant. Counsel for appellant objected on these grounds, but the Court stated that, "the Court would consider them anyway".

3—The Court ruled that the judgment debtor's estate by curtesy, which was subject to judgment liens of more than \$50,000.00, was forfeited to the remaindermen and the judgment debtor divested thereof, although there had been no deed or judicial decree between the parties. We contend that a vested estate by curtesy cannot be terminated during the life of the life tenant, except by deed or judicial decree. We further contend that the judgment liens against the life estate could not be cut off simply by acts between the life tenant and remaindermen.

4—The tax deeds from the District of Columbia to appellee Mary Catherine Lindeneau were a fraud on the judgment debtor's creditors. In form, they were involuntary transfers, but in fact, they were voluntary transfers. The deeds were issued in 1935 and 1936, at which time, the evidence shows, the judgment debtor was receiving the rents from the properties. The evidence also shows that the tax deeds were purchased, in part, if not entirely, with rents from the properties. In other words, the judgment debtor allowed the taxes to go unpaid and then allowed his rents to be used to purchase the tax titles in the name of his daughter. This was a fraud on his creditors. Moreover, the evidence shows that after the deeds were issued, the

judgment debtor continued to receive the rents from the properties. This is a badge of fraud and proved that there was either an expressed or implied reservation of benefits to the judgment debtor. The tax deeds have never been recorded. This is another badge of fraud.

One of the properties is not even covered by the tax deeds. Nevertheless, the Trial Court ruled that the tax deeds divested the judgment debtor of his life estate in all the properties.

Even if the appellee Mary Catherine Lindeneau had purchased the tax deeds with her own money, such deeds would not have divested the judgment debtor of his life estate or created any greater estate than she already had as one of the remaindermen. Her purchase of the tax deeds should be construed as nothing more than her method of paying taxes on property in which she had an estate.

The Court's ruling that the tax deeds divested the judgment debtor of his life estate cannot be reconciled with its ruling that the tax deeds did not divest the other remaindermen of their estate in the properties.

5—The evidence did not prove waste on the part of the life tenant, appellee Joseph A. Berberich. Moreover, we contend that, if there had been waste, the remaindermen could not have asserted a forfeiture simply by stating that the life tenant was through and that they were taking over the properties, particularly in view of the fact that the life estate was subject to judgment liens in favor of third parties.

6—The findings of fact do not contain findings on the fundamental issues of the case, *i. e.*, (1) intent, (2) consid-

eration, and (3) knowledge. Instead, it contains much irrelevant and immaterial matter. In our argument, we have reviewed the findings and evidence and have shown that many statements in the findings are not supported by the evidence and that some of the essential facts shown by the evidence are omitted from the findings.

The conclusions of law and judgment contain matters upon which the Court could not have ruled and upon which the Court did not rule in its disposition of the motion to dismiss at the close of the appellant's evidence. They fail to include the Court's conclusion that the appellant's evidence failed to make out a *prima facie* case. The judgment not only dismisses the action, but adjudicates matters that were not before the Court.

ARGUMENT.

1. Appellant's evidence made out a *prima facie* case.

The Trial Court did not find that appellant's evidence was unworthy of belief, in whole or in part. In fact, such a finding would scarcely have been possible in view of the nature of appellant's evidence, which consisted almost entirely of the records of disinterested third persons kept in the ordinary course of their businesses. In the absence of such a finding, or even the possibility of such a finding, it is almost inconceivable how any court could have reached the conclusion that appellant's evidence did not make out a *prima facie* case and was not sufficient to put the appellees to their proof. The evidence of the transactions between the appellees is replete with badges of fraud, which were called to the attention of the Trial Court. Moreover, an examination of the evidence will disclose that it proved

every allegation of the complaint, which was filed before the new rules became effective and stated the cause of action in great detail.

The transactions involved were between the judgment debtor, his sister and daughter. This Court ruled in *Evans vs. Bell*, 49 App. D. C. 238 that such transactions are viewed by the law with grave suspicions and require close scrutiny at the hands of a court of equity. The judgment debtor, his sister and daughter were living in the same house. He was in financial difficulties and they knew about his financial difficulties. (Appellant's App. 82.)

With respect to his financial difficulties, the evidence showed that at the time the transactions occurred, appellee Joseph A. Berberich had judgments against him totaling more than \$50,000.00. (Appellant's App. 32 and 34.) These judgments constituted liens against his interests, whether legal or equitable, in any real estate in the District of Columbia. Any personal property that he owned or had an interest in was subject to attachment on these judgments.

On December 14, 1931, while the appellee Joseph A. Berberich was indebted to appellant, the first transaction in question occurred. On that date, he, as one of the executors of his father's estate, transferred and assigned \$9,197.14 to his Mother, who on the next day transferred and assigned the same amount to the appellee May Berberich. His brother, Robert J. Berberich, was co-executor of their father's estate. (Appellant's App. 32, 33 and 41.) At that time, he and his brother were both in financial difficulties. His brother and their firm, Robert Berberich and Sons, Inc., had both gone into bankruptcy. (Appellant's App. 84-85.) They had an undivided interest in the fund in the father's

estate, subject to the life estate of the Mother. (Appellant's App. 32-33.) Their father had died on November 15, 1918. The fund in question was on deposit in a building association in the father's name, at the time of his death, and remained in his name until its transfer on December 14, 1931. (Appellant's App. 33 and 41.) It was subject to the order of his executors, but from November 15, 1918 to December 14, 1931, there evidently had been no occasion for them to disturb the fund. However, on the latter date, they were both in financial difficulties. The brother and their firm were in bankruptcy. In his Schedule of Assets in bankruptcy, the brother had not listed his interest in the father's estate as one of his assets. (Appellant's App. 34.) That, we submit, is a possible reason why the transfer on December 14, 1931 was made by the appellee Joseph A. Berberich, only, as one of the executors of the father's estate. However, the necessity for the transfer and concealment of their interest in this fund was just as urgent to the appellee Joseph A. Berberich as it was to his brother at that time, because he, too, was in serious financial difficulties.

There is no explanation in the evidence as to why the transfer was made at that time. The transfer tended to conceal from their creditors their interest in the fund, and it must be inferred from the evidence, in the absence of any explanation, that they so intended. There was nothing in the father's will requiring the transfer at that time. (Appellant's App. 32-33.)

When their Mother died on October 18, 1934, appellee Joseph A. Berberich and his brother, although executors of the father's estate, did not close out the estate. It was closed by their Uncle, Charles F. Rupert. When asked why he and his brother did not perform their duties as executors,

the judgment debtor answered that it was handled by Mr. Rupert because he was older, which was hardly a plausible answer in view of the fact that the judgment debtor and his brother were then well beyond middle-age themselves. (Appellant's App. 85.)

The judgment debtor testified that his share of his father's estate did not come into his hands and that it was paid to his daughter, sister and William J. Walters. (Appellant's App. 85.) Although his daughter received \$2,498.00 and his sister, \$500.00, for supposed advances, there was no explanation, either verbal or by records, as to when they made the advances or how much they advanced and the judgment debtor testified that he did not remember. (Appellant's App. 85.) How could any court resist the conclusion that the judgment debtor intended the natural and probable consequence, which was to delay, hinder or defraud his creditors in any effort on their part to reach his interest in this fund, which became distributable to him and was distributed to his sister and daughter while he had judgments, including appellant's, of more than \$50,000.00 against him.

In *Breneman v. Herdman*, 35 App. D. C. 27-33, the Court said:

“* * * The record conclusively shows that at the time he made this conveyance he was harassed by creditors, and that the only property he had in the world was the interest which he conveyed to his sister. It will appear, in the consideration of the next assignment of error, that said conveyance was made upon little or no consideration, although purporting to have been made upon a fairly adequate consideration. It is apparent, therefore, that he was not in good faith preferring one creditor over others, as he would have the right to do. *Merillat v. Hensey*, 32 App. D. C. 64. But, on the contrary, the inevitable consequences flowing

from his acts were to hinder, delay, or defraud his creditors, within the meaning of sec. 1120 of the Code. (31 Stat. at L. 1368, chap. 854.) Barber v. Wilds, 33 App. D. C. 150.)”

With respect to the real estate at 1801 Kenyon Street, Northwest, it might be argued that the transfer was not voluntary, but when one considers all the facts and circumstances shown by the evidence, it becomes apparent that it was voluntary. Mr. Berberich had owned the property for twenty-two years prior to October 10, 1932, when the sale under the deed of trust occurred and Appellee May Berberich became the supposed purchaser. He had lived in the property all that time and was then living in it. (Appellant's App. 82.) He could not then have made the usual voluntary conveyance, because there were two judgment liens against the property. (Appellant's App. 34.) At that time, he was also indebted to appellant. There was but one way that he could transfer the property and get it beyond the reach of his creditor's remedies at law, and that was to allow a sale to occur under the deed of trust which had priority over the judgment liens. That course was followed. His sister became the purchaser at the sale. There was no evidence to show who furnished the purchase money. Mr. Berberich, his sister and daughter continued to live in the property until 1935, when his sister moved out and conveyed it to his daughter *without any consideration*. His daughter moved out in 1936. He continued to live there until 1939. He never paid any rent for the property. He occupied the property as would have any owner. When he moved, the property was rented. He admitted that he collected some of the rents. He claimed that he collected them for his daughter's account, but it did not appear that he ever accounted to his daughter for any part of the rent. There was no explanation by appel-

lees as to who collected rents from this property, if Mr. Berberich did not collect all of them. Appellee Mary Catherine Lindeneau was aboard. (Appellant's App. 80.) None of the agents who collected rents from the other properties involved collected any part of the rents from the Kenyon Street property. (Appellant's App. 43 to 80.)

In connection with the evidence relating to the other twelve properties involved, it was shown that taxes and interest on the Kenyon Street property were paid out of the rents from the other properties. (Appellant's App. 80 and 83.) This fact tends to prove that the foreclosure was voluntary and intended to defraud creditors. When the foreclosure occurred, Mr. Berberich was in receipt of a substantial net income from the other properties—sufficient to meet taxes and interest on the Kenyon Street property and moderate living expenses. (Appellant's App. 44-49.) Substantially every fact shown by the evidence in relation to the Kenyon Street property is a familiar badge of fraud in this class of cases, particularly his continued possession after the foreclosure and his exclusive possession for three years without payment of rent, his collection of rents without showing that he accounted to his daughter for them and the transfer of the property by his sister to his daughter without any consideration. It might be argued that they were unbusinesslike in these matters because they were so closely related, but the answer to that is that the foreclosure and purchase by his sister was quite a businesslike transaction, if it was genuine.

The judgment debtor's fraudulent intent in the transfers relating to his interest in his father's estate and the Kenyon Street property becomes even more apparent when considered in the light of the evidence relating to his

handling of the twelve properties in which he had an estate by curtesy. (Appellant's App. 43-80.)

In December, 1918, Mr. Berberich's wife died and thereupon he acquired an estate by curtesy in the twelve properties described in paragraph 7 of the complaint. (Appellant's App. 5, 6, 33, 40, and 86.) Appellant called Charles S. Shreve as a witness and he testified that he collected rents from three of these properties for Mr. Berberich from December, 1930 until March 16, 1936 when he stopped collecting the rents at the direction of Joseph A. Berberich. His records were produced and received in evidence. His ledger sheets showed the rents from these *three* properties amounted to \$50.50 per month. They also showed some disbursements for water rent and repairs. His cancelled checks were introduced and showed that up to April, 1936, the rents were always paid over to Joseph A. Berberich, except on a few occasions. His records also showed that on March 23, 1936, he was served with a writ of garnishment on the judgment in this case and shortly thereafter, April 4, 1936, turned over all rent agreements to Joseph A. Berberich. (Appellant's App. 43-46.)

It will be observed from the foregoing that the judgment debtor was receiving the rents from these three properties at all times until appellant attempted to reach them by writ of attachment and garnishment. An interesting contrast with this evidence is found in his answer, paragraph 7, (Tr. 24) wherein he said "that the remainder interest in said property seized said property and the income therefrom and declared a permanent forfeiture against this defendant during the month of May, 1935, and has continued to demand and receive said income since that time." Another significant conflict with his answer is found in his testi-

mony. He testified that in the Spring of 1936 his son and son-in-law came to him and told him that he was through and that they were taking over the properties. (Appellant's App. 81.) Another conflict with his answer and testimony appears in an affidavit made and filed by him on April 8, 1936, in support of a motion to quash garnishments, in which he made oath "that he is the owner of an estate by the curtesy created by virtue of the death of Rose Berberich, his wife * * *." (Appellant's App. 39-40.) Another inconsistency was his admission in his testimony that from April, 1936 until 1938, he personally called at some of the houses sometimes and collected rents and some tenants came to Kenyon Street and paid the rent to him. He claimed that he collected the rent for his daughter's account, but did not attempt to explain how or when he accounted therefor to his daughter who was abroad. (Appellant's App. 84.) The judgment debtor was the only person shown to have collected rent from any of these twelve properties between August, 1936 and October, 1937, and this evidence together with all the other facts and circumstances shown by the evidence, we submit, is sufficient to create an inference, which must stand in the absence of evidence to the contrary, that the judgment debtor himself, collected all the rents during that period of time and received the benefit thereof.

Even more revealing of the judgment debtor's fraudulent intent is the evidence in relation to the rents from the remaining nine of the twelve properties in which he has an estate by curtesy. Lawrence J. Mills, a real estate agent called as a witness, testified that he commenced to collect the rents from these nine properties in November, 1930; that at that time he began to pay over the rents to Joseph A. Berberich "and continued to do so to August 6, 1936;"

(Appellant's App. 46.) This testimony was significant in the light of his cancelled rent remittance checks which showed that Joseph A. Berberich actually continued to receive the rents to August 6, 1936, although the ledger accounts for some of the rents were changed to "Miss Mary C. Berberich" (Appellee Mary Catherine Lindeneau) on April 25, 1935. (Appellant's App. 46-58.) This witness also testified that he dealt with Joseph A. Berberich as the owner of the properties and had no transactions whatever with Mary C. Berberich, "except that the account was put in her name"; that he never saw Mary C. Berberich in his office; that Joseph A. Berberich got the rent checks from his office; that he discontinued collection of the rents after garnishments were served on him; that the account became too troublesome and he turned over the account and rent agreements to Joseph A. Berberich. (Appellant's App. 47.)

Mr. Mills' ledger records were offered and received in evidence. A detailed analysis of them appears in the statement of evidence. (Appellant's App. 47-53.) Without restating what appears in the appendix, attention is called to the fact that from November, 1930 to April, 1935, the total rents from these *nine* properties ran as high as \$311.95 per month and were collected in the name of and remitted to Joseph A. Berberich, and that the rents from these *nine* properties ran about the same after some of the accounts were transferred to the name of Mary C. Berberich.

Mr. Mills' cancelled rent remittance checks were also offered and received in evidence. A detailed analysis of them likewise appears in the statement of evidence. (Appellant's App. 53-57.) All checks up to April 10, 1935, were made to and endorsed by Joseph A. Berberich. It was about that time that some of the rent accounts were chang-

ed to the name of Mary C. Berberich. Thereafter the payee in the checks varies, *but substantially all the checks bear the endorsement of Joseph A. Berberich* and show that he was the true beneficiary of the rents after the rent accounts were changed to his daughter's name. A study of the way these checks were made payable and the endorsements on them cannot fail to convince one of the fraudulent intent of the judgment debtor.

The real reason why the rent collections were taken out of the hands of the agent Shreve in April, 1936, and the agent Mills in August, 1936, appears in the statement of evidence. Commencing on March 23, 1936, appellant issued a series of writs of attachment and garnishment in an attempt to reach the rents from these properties (Appellant's App. 35-40). The judgment debtor first attempted to defeat the appellant by a motion to quash the garnishments on the ground that rents from an estate by curtesy are not subject to attachment. (Appellant's App. 39-40.) Having failed in this attempt, his agent Mills filed suits against the tenants for nonpayment of rent after they had been served with writs of garnishment. (Appellant's App. 46.) Mr. Berberich then took the rent collections out of the hands of his agents. Another agent was not employed until October, 1937. As hereinbefore pointed out, the judgment debtor was the only person shown to have collected the rents during the period from August, 1936 to October, 1937.

The new agent, Henry H. Carter, was called as a witness and testified that *the rent collections were turned over to him by Joseph A. Berberich in 1937*. His cancelled checks and ledger records, which were offered and received in evidence, showed that he commenced the collection of rents in

October, 1937. He testified that he collected the rents for Mr. Berberich's daughter, Mary C. Berberich, but that he had no dealings with her personally in regard to the property, and that Joseph A. Berberich was in his office personally from time to time about the properties. The analysis of his cancelled rent remittance checks, which appears in the statement of evidence, shows that some of the cancelled checks bear the endorsement of Joseph A. Berberich. (Appellant's App. 59-63.) The analysis of his ledger sheets, which appears in the statement of evidence, shows that even after the rent collections were turned over to him, some rents were collected by "J. Berberich" and that from time to time, this agent paid over some of the rents in cash to "J. Berberich". (Appellant's App. 63-71.) These ledger sheets in some instances purport to show payment of cash to "Mary C. Berberich", despite the fact that all the other evidence in the case showed that Mary C. Berberich (appellee Mary Catherine Lindeneau) was out of this Country at the time the rents were supposedly paid over to her in cash, and despite the testimony of the agent that he had no dealings with Mary C. Berberich personally in regard to the property. One of the agent's rent statements contained an entry "9/6 to cash M. Berberich \$10." in which the "M" was written in bright blue ink over a partially erased "J" and the remainder of the entry was in black ink. (Appellant's App. 68.) Another entry was as follows: "5/28 to check J. Mary Berberich". (Appellant's App. 70.)

The rent remittance checks issued by this agent were made payable to "Mary C. Berberich". Many of the checks purported to bear her endorsement, although she was out of the County. (Appellant's App. 59-63.) In fact, they were

not the endorsements of "Mary C. Berberich". This was proved when appellant called Rose Duckett as a witness. She was waiting in the witness room as a witness for the appellees when she was called by the appellant. She testified that the endorsements "Mary C. Berberich" on the checks were in her (the witness's) handwriting. She claimed to have had a power of attorney, but she did not produce the power of attorney. She also testified that all the rents had been deposited in The Riggs National Bank in an account in the name of "Rose Duckett". But the endorsements on Mr. Carter's rent remittance checks do not support her testimony. The endorsements show that many of the checks were not deposited in the account. However, many of Mr. Carter's rent remittance checks were deposited in that bank account, the records of which were offered and received in evidence. The records of the account showed that it was in the name of "Dr. Walter F. Berberich and/or Mrs. Rose Duckett". The name of the appellee Mary Catherine Berberich Lindeneau did not appear on any of the bank statements. The check stubs for the account show that the judgment debtor, Joseph A. Berberich, was the principal beneficiary of the checks drawn against the account in 1938 and subsequent years. (Appellant's App. 72-81.)

The ledger records and cancelled rent remittance checks of the agent Carter, his testimony, the testimony of Rose Duckett, and the records of the account in The Riggs National Bank, individually and collectively, clearly tended to prove that subsequent to October, 1937, Joseph A. Berberich was the true beneficiary of the rents and income from these twelve properties and that the manner of handling the rent collections and disbursements was devised for the purpose of concealing the judgment debtor's interest in the

rents and to defeat appellant in its efforts to reach the rents in satisfaction of its judgment.

Although Rose Duckett testified that, from the proceeds of the rent, her father's room and board bill of \$40.00 per month was paid and he was given an allowance of only \$15.00 a month, the check stubs showed that he was receiving at least \$15.00 a week in addition to his board and room bill of \$40.00 per month, and in addition to other disbursements for his benefit. In fact, the check stubs show that he received the benefit of substantially all monies withdrawn from the account. (Appellant's App. 73-80.)

There are many other facts and circumstances in the evidence that are indicative of an intent to hinder, delay or defraud Mr. Berberich's creditors. If all the facts and circumstances shown by the evidence in this case are insufficient to make out a *prima facie* case, there will be little, if any, hope left for creditors hindered, delayed or defrauded by their debtors.

Appellant having proved by all the facts and circumstances shown by the evidence the intent of the judgment debtor to hinder, delay or defraud his creditors, the next question in the case would have been to ascertain from the evidence whether the appellees May Berberich and Mary Catherine Lindeneau acquired the properties in question in good faith. To show that they acquired the properties in good faith, the burden was upon them to prove that they actually paid a valuable consideration.

In *Morimura vs. Samaha*, 25 App. D. C. 189-196, this Court said:

"2. That Haggar Brothers & Daavid Company made the sale to Samaha with the intent to defraud

their many creditors the jury could have had no reasonable doubt. The thing for them to ascertain from the evidence was whether Samaha made the purchase in good faith. To show purchase in good faith the burden was upon him to prove that he actually paid the consideration named in the contract of sale. In addition thereto he must have had no previous notice of the fraudulent intent of his vendors. Upon this proposition the presumption was in his favor, and the burden developed upon the creditors to show, by evidence direct or circumstantial, that he had such notice. (Jones v. Simpson, 116 U. S. 609, 614, 29 L. ed. 742, 744, 6 Sup. Ct. Rep. 538.)”

The ruling of this Court in that case was, in effect, that there are three issues in this class of cases, (1) the debtor's fraudulent intent, (2) payment of a valuable consideration by the transferee, and (3) the transferee's knowledge of the debtor's fraudulent intent. As to the first issue the burden of proof is on the plaintiff, as to the second, it is on the defendant, and as to the third, it is on the plaintiff.

Appellant proved the fraudulent intent of the judgment debtor, Joseph A. Berberich, by the facts and circumstances shown in the evidence, some of which we have called to the Court's attention. Many of these facts and circumstances are familiar badges of fraud in this class of cases.

Proof of the fraudulent intent of the judgment debtor was sufficient to make out a *prima facie* case. But the evidence went even further and showed knowledge on the part of the appellees May Berberich and Mary Catherine Lindeneau of the judgment debtor's fraudulent intent. In fact, it showed they actively participated in the fraud.

The appellant's evidence would have been sufficient to entitle appellant to a judgment even if the appellees had

been required by the Trial Court to put in their evidence and they had proved a valuable consideration, because the evidence conclusively proved they had knowledge of the fraudulent intent on the part of the judgment debtor.

The natural and probable consequences of the transactions was to, and they did, hinder, delay and defraud appellant, and the appellees must be held to have so intended, within the meaning of Section 12-401 of the District of Columbia Code, 1940 Edition.

In *Barber vs. Wilds*, 33 App. D. C. 150-155, the Court said:

"The cause having been heard on bill and answers, all averments of fact in the answers, so far as they are consistent with the documentary evidence in the cause, must be taken as true; but it by no means follows that, because the defendants have denied any attempt to hinder, delay, or defraud the creditors of Barber, the court is precluded from finding such intent from the facts and circumstances surrounding the transactions of the parties denying such intent.

"Section 1120 of the Code (31 Stat. at L. 1368, chap. 854) provides 'that the question of fraudulent intent shall be deemed a question of fact, and not of law.' In *Means v. Dowd*, 128 U. S. 273, 32 L. ed. 429, 9 Sup. Ct. Rep. 65, it was held that a similar statute in Indiana 'had not changed the law on the subject, and that the court must, in the first instance, determine upon the legal effect of the written instrument, and, if that be to delay creditors, it must be rejected.'

"In construing a similar statute the court, in *Thomson v. Crane*, 73 Fed. 327, said: 'A voluntary deed is fraudulent by operation of law where the facts and circumstances clearly show that (the rights of) existing creditors are thereby prejudiced, without regard to whether there was any actual or moral fraud in the conveyance.

"To the same effect are: 20 Cyc. Law & Proc. p. 463; *Farrow v. Hayes*, 51 Md. 505; *Hathaway v. Brown*,

18 Minn. 414, Gil. 373; *Smith v. Conkwright*, 28 Minn. 23, 8 N. W. 876; *Cunningham v. Freeborn*, 11 Wend. 241.

“We conclude, therefore, that Section 1120 was not intended to change, and does not change, the rule that parties shall be held to intend the natural and probable consequences of their acts. It follows that, if the inevitable consequences of a conveyance are to hinder, delay, or defraud creditors, the court must so hold notwithstanding the denial of such intent by the parties to such conveyance.”

In that case, the Court cited *Lukins v. Aird*, 6 Wall. 78, 18 L. ed. 750, where the Supreme Court said:

“The law will not permit a debtor in failing circumstances to sell his land, convey it by deed, without reservations, and yet secretly reserve to himself the right to possess and occupy it for a limited time, for his own benefit. Such a transfer may be upon a valuable consideration, but it lacks the element of good faith; for while it professes to be an absolute conveyance on its face, there is a concealed agreement between the parties to it, inconsistent with its terms, securing a benefit to the grantor, at the expense of those he owes. A trust, thus secretly created, whether so intended or not, is a fraud on creditors, because it places beyond their reach a valuable right,—the right of possession,—and gives to the debtor the beneficial enjoyment of what rightfully belongs to his creditors.”

2. The Court's findings, conclusions of law and judgment were based on evidence not offered by appellant and not competent.

As shown in the statement of evidence the tax deeds and the record in Equity Cause No. 61,456 were not offered in evidence by appellant, but the Trial Judge stated that the Court had examined them and that “the Court would con-

sider them anyway," over the objection of counsel for appellant. (Appellant's App. 87.)

The findings of fact, conclusions of law and judgment show that they were based in part on the tax deeds and the record in the other equity case. (Appellant's App. 19, 20, 24 and 27.) That this was error on the part of the Trial Court seems so clear as not to require the citation of authorities. The record in the equity case was not even competent evidence and was not admissible against appellant for the reasons stated by counsel in support of his objection to the Court's ruling.

3. Appellee Joseph A. Berberich could not be divested of his estate by curtesy, except by deed or judicial decree.

In the conclusions of law and judgment the Court ruled that the judgment debtor's estate by curtesy in the twelve properties was forfeited to his children "as the remaindermen and reversion interest therein," by virtue of the failure of the judgment debtor, as the life tenant, to pay taxes on the property and the giving of tax deeds by the District of Columbia and by the failure to repair and properly maintain the improvements on the property. (Appellant's App. 23, 24, 26 and 27.) In other words, the Court ruled that a vested estate by curtesy, which is a freehold estate, can be forfeited and the life tenant divested of his estate by the acts of the life tenant and the remaindermen without deed or judicial decree. The ruling was, in effect, that the judgment liens against the life estate and the right of the judgment creditors to reach the rents from the properties in satisfaction of their judgments were destroyed by the acts of the life tenant and the remaindermen and that nothing more was required to cut off the rights of the judgment

creditors of the life tenant. This ruling was so preposterous that it is indefensible. It was admitted that the judgment debtor had a vested life estate and the conclusions of law and judgment refer to it as a vested estate.

The estate by curtesy was acquired by the judgment debtor under the provisions of Section 18-215 of the District of Columbia Code, 1940 Edition. We submit that the judgment debtor could not be divested of the estate during his lifetime, except by a deed or judicial decree. Section 45-101 of the District of Columbia Code, 1940 Edition, provides as follows:

“Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed.”

Section 12-301 of the District of Columbia Code, 1940 Edition, provides as follows:

“Every estate in lands, tenements, or hereditaments for a greater term than one year attempted to be created by parol, or otherwise than by deed, shall be an estate by sufferance.”

The error in the conclusion of law and judgment of the Court on this question seems so obvious as to scarcely require the citation of authorities. However, there are many authorities holding that a freehold estate can be disclaimed or forfeited only by deed or in a Court of record. 50 C. J. 784; *Watson vs. Watson*, 13 Conn. 83-86; *Hardin vs. Wanslee*, 197 S. W. 1031-1033-1035; *Allen vs. Neff*, 102 W. Va. 230, 135 S. E. 2, 50 A.L.R. 1293-1295; *Jackson vs. Davis*, 5 Cowen (N. Y.) 123, 15 Am. Dec. 451-459; *High's Heirs*

vs. Pancake, 42 W. Va. 602-607; City of New York vs. Realty Associates, 256 N. Y. 217-221; Roby vs. Newton, 121 Ga. 679, 49 S. E. 694, 68 L.R.A. 601; Shattuck vs. Grogg, 23 Pick. (Mass.) 88-92; Duvall vs. Waters, 1 Bland (Md.) 534-537.

In Waldron vs. Harvey, 54 W. Va. 608-617, it is stated that “* * * Title to land cannot pass by admission, when statute requires a deed. * * *”

In Suttle vs. R. F. & P. R. R. Co., 76 Va. 284-286, the court said:

“It has been long settled in this State that the disclaimer of a freehold can only be by deed or in a court of record. See the case of Bryan v. Hyre, etc. 1st Rob. R. 101, a conclusive authority on this subject.
* * *”

It was a monstrous ruling on the part of the Trial Court that the rights of the appellant and other judgment creditors of Joseph A. Berberich could be defeated simply by the testimony of the judgment debtor “that in the Spring of 1936 his son and son-in-law came to him and told him that he was through and that they were taking over the said properties”, particularly so when the evidence proved that they did not do what he testified they told him they were going to do. (Appellant’s App. 81.) As heretofore pointed out, the evidence showed that the judgment debtor continued thereafter to be the principal, if not the only, beneficiary of the rents. It was he who placed the rent collections in the hands of the agent Carter in October, 1937, more than a year after the supposed assertion of a forfeiture of his estate in the properties.

4. The tax deeds did not divest appellee Joseph A. Berberich of his estate by curtesy and such deeds did not create in appellee Mary Catherine Lindeneau any greater estate than she already had as one of the remaindermen.

The tax deeds appear in the statement of evidence. (Tr. 94-108.) There were five of them, and they show that none of them was ever recorded. This is another badge of fraud. The five tax deeds covered lot 830 square 551, lot 66 square 357, lot 802 square 471, lot 806 square 512, and lot 44 square 482. There was no tax deed covering lot 11, also known as lot 835, square 2884, known as premises 909 Euclid Street, Northwest. The tax deeds to the first four mentioned lots were dated March 22, 1935 and the tax deed to the last mentioned lot was dated May 1, 1936. The total amount paid for the five deeds, including interest and penalties on the overdue taxes was \$1,554.93. The tax deeds each and all show on their face that at the times of the tax sales, the properties were assessed as follows: "Rose M. Berberich, Est. of". They also show that at the tax sales, the properties were bid in and purchased for the District of Columbia, and that Mary C. Berberich (appellee Mary Catherine Lindeneau) made application to purchase the properties from the District of Columbia at private sale on or about the dates of the deeds.

It will be observed from the foregoing statement of facts that one of the properties in question was not even covered by a tax deed. Nevertheless, the Trial Court ruled that because of the tax deeds, the judgment debtor had been divested of his estate by curtesy in all the properties.

Rose Duckett, a daughter of the judgment debtor, testified that her sister, Mary Catherine Lindeneau, used some

of the rents with which to purchase the tax deeds. (Appellant's App. 72.) The deeds were issued in 1935 and 1936, at which times the evidence shows the judgment debtor was receiving the rents. In other words, she used some of the judgment debtor's funds to purchase the tax deeds. This is a badge of fraud and, in fact, was a fraud on the appellant and other creditors of Joseph A. Berberich. Rose Duckett also testified that her sister borrowed some money for that purpose, but she did not remember when, how much or from whom the money was borrowed. (Appellant's App. 72.) On this evidence, the tax deeds should not have been given any weight, even if they had been properly before the Court, which they were not, in the Court's consideration of the motion to dismiss at the close of appellant's evidence.

In Callihan vs. Russell, 66 W. Va. 524, 66 S. E. 695, 26 L.R.A. (NS) 1176, the Court said:

"It would be manifestly inequitable to permit the remainderman to become a purchaser at tax sale so as to oust the life tenant and thereby frustrate the very scheme of the conveyance under which that remainderman is entitled. True, it is the duty of the life tenant primarily to pay the taxes. Under our law they are assessed to him. But, if the taxes, through an oversight *or delay* are not paid by the life tenant and the remainderman purchases at tax sale or acquires a tax purchase arising from the default, the law presumes that his act was only a payment of the taxes."

In Choteau vs. Jones, 11 Ill. 300-322, the Court said:

"* * * A purchaser at a tax sale of land, in which he has an interest as heir, acquires no additional title.
* * *"

In Piatt vs. St. Clair's Heirs, 6 Oh. R. 227-239, the Court said:

“ * * * It would be strange, indeed, if either a court of law or equity should feel compelled to give such effect to the culpable omission of the heir to keep down the taxes, as to enable him, in consequence, to acquire a perfect right to the estate, to the total exclusion of those whose rights he was bound to protect. We look upon the purchase by the heir for taxes as but his own method of paying them. * * * ”

Anybody could have gone to the District Building and applied for the tax deeds. Suppose Joseph A. Berberich had applied for and obtained the same deeds from the District of Columbia. Would the deeds to him have cut off the remaindermen's interest? We submit that he could not have defeated their estate in remainder in that manner. Appellee Mary Catherine Lindeneau could not defeat his life estate in that manner.

It is impossible to reconcile the Trial Court's rulings in this regard. The Court ruled that the tax deeds to appellee Mary Catherine Lindeneau divested appellee Joseph A. Berberich of his life estate, but did not disturb the estate of her co-remaindermen. (Appellant's App. 24.)

In considering the tax deeds, it should be borne in mind that the life estate of the judgment debtor was subject to judgment liens of more than \$50,000.00. There was no prior deed of trust against his life estate in the twelve properties as there was in the case of the Kenyon Street property, so that the only course open to the judgment debtor to hinder, delay or defraud his creditors was for him to resort to the device of non-payment of taxes and the purchase of tax deeds from the District of Columbia in the name of his daughter.

5. The evidence did not show waste on the part of the life tenant, Joseph A. Berberich.

With respect to the three properties from which the agent Shreve collected the rents, there was not a scintilla of evidence of waste. (Appellant's App. 43-46.) As to the nine properties from which the agent Mills collected the rents, the only evidence was that "the properties from which he collected rents were old and in pretty bad condition." (Appellant's App. 58.) That is a characteristic of most old rental property. But this evidence was wholly insufficient to prove waste or support the Court's finding (Appellant's App. 20) that Joseph A. Berberich "commencing about 1931, failed to keep in good repair the various properties to which he was entitled to the estate by the curtesy" and that the property was physically delapidated. On the contrary, the ledger records of the agent Mills showed regular monthly disbursements for repairs. (Appellant's App. 48-53.) The rental agents' records proved that the properties were rented, income-producing and habitable at all times.

Moreover, even if the evidence had shown waste, it would not have given the remaindermen the right to assert a forfeiture by applying "self-help" or by simply stating that the life tenant was through and that they were taking over the properties. (Appellant's App. 81.)

In *Eliot vs. Lamon*, 1 MacArthur (D. C.) 647, the Court held that the remedy of the remaindermen, where the life tenant fails to repair and pay taxes, is by bill in equity to compel payment.

Under Section 45-1301 of the District of Columbia Code, the remaindermen's remedy was by way of a writ of waste. That section provides as follows:

"A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or a woman in dower; and he which shall be attainted of waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at."

In view of the absence of evidence of waste in this case, it is idle to have to argue this question.

6. The evidence does not support the findings of fact and they as well as the conclusions of law and judgment are improper in other respects.

In this class of cases, the most essential findings are findings with respect to the presence or absence of a valuable consideration for the transfers, fraudulent intent or absence of it on the part of the judgment debtor and knowledge or lack of knowledge on the part of the transferee of the judgment debtor's fraudulent intent. The Trial Court's findings do not contain any specific findings on these fundamental issues. Neither do they contain a finding that appellant's evidence failed to prove a *prima facie* case. Instead of containing these essentials, the findings of fact contained much irrelevant and immaterial matter and are more in the nature of a statement of evidence than findings of fact. Even as a statement of evidence they are inaccurate and incomplete. (Appellant's App. 16-22.)

The conclusions of law and judgment are substantially identical in terms. They contain many matters which the

Court could not have ruled upon and did not rule upon in its disposition of the motion to dismiss at the close of appellant's evidence. They go far beyond what the Court's ruling was on the motion to dismiss, *i. e.*, appellant's evidence failed to make out a *prima facie* case and the action should be dismissed. In fact, the conclusions entirely omit this conclusion, which was essential to a judgment dismissing the action. The judgment not only dismisses the action, but adjudicates matters that were not before the Court.

The evidence showed that the transfer of the Kenyon Street property from appellee May Berberich to appellee Mary Catherine Lindeneau was without any consideration, but there was no finding to that effect by the Court. (Appellant's App. 16-18.)

The Court made a finding that after Joseph A Berberich moved from the Kenyon Street property, it has been rented and the rent paid to the account of appellee Mary Catherine Lindeneau. (Appellant's App. 18.) There was no evidence to support this finding.

There was no evidence to support the finding of non-payment of taxes on the twelve rental properties from 1932 to 1935, except the recitations in the tax deeds which were not properly before the Court. (Appellant's App. 19 and 87; Tr. 94 to 108.)

There was no evidence to support the finding that Joseph A. Berberich commencing in 1931 failed to keep the properties in repair or that the properties were in physical delapidation, except the testimony of the agent Mills that the nine properties from which he collected the rents "were old and in pretty bad condition". (Appellant's App. 20

and 58.) There was not a scintilla of evidence to show that the three properties from which the agent Shreve collected rents were not kept in good repair or were in "physical delapidation". Nevertheless, the Court found that he failed to keep in good repair "the various properties to which he was entitled to the estate by the curtesy." (Appellant's App. 20.)

There was no evidence before the Court to support the findings in paragraph 5 of the findings of fact. (Appellant's App. 20 and 87.)

The evidence does not support the finding that "from 1936 all rentals * * * were deposited in the Riggs National Bank to the credit of Mary Catherine Berberich (now Lindeneau) and checked out by her until her departure from Washington. Before leaving Washington, the said Mary Catherine Berberich (now Lindeneau) executed a power of attorney, allowing her brother, Dr. Walter F. Berberich, or her sister, Rose M. Berberich (now Rose M. Duckett) to check against the account". (Appellant's App. 20-21.) The endorsements on the cancelled rental checks prove the contrary. (Appellant's App. 59-63.) Moreover, the account was not in the name of Mary Catherine Berberich, but was in the name of "Dr. Walter F. Berberich and/or Mrs. Rose Duckett". (Appellant's App. 72.) No power of attorney was produced and it was obvious that none was necessary, because the account was not in the name of Mary Catherine Berberich.

The finding that Mr. Berberich received \$15.00 *per month* for incidentals from the rents was preposterous in view of the check stubs introduced in evidence, which showed that he received substantially all the money that was

withdrawn from the account. (Appellant's App. 21, and 73-80.)

There was a finding that the \$2,498.00 paid to appellee Mary Catherine Lindeneau and the sum of \$500.00 to appellee May Berberich out of Mr. Berberich's share of his father's estate was for advances, but there was no finding as to how much was advanced or when it was advanced. In other words, there was no finding that there were advances. In fact, there was no evidence that would have supported such a finding. (Appellant's App. 22.)

Conclusion.

It is respectfully submitted that the judgment should be reversed.

ARTHUR J. HILLAND,
DEWITT S. HYDE,
Attorneys for Appellant.

APPENDIX

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APPENDIX

Case No. 8132.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

Holding an Equity Court.

J. R. BEATON COMPANY, INC., a
corporation, 411 Fifth Avenue, New
York City,

Plaintiff,

v.

MAY BERBERICH, 1728 Lamont
Street, N. W.

JOSEPH A. BERBERICH, 1801
Kenyon Street, N. W.

MARY CATHERINE LINDE-
NEAU, 1801 Kenyon Street, N. W.,

Defendants.

Equity No. 66129.

Filed Dec. 15, 1937.

**BILL OF DISCOVERY AND JUDGMENT
CREDITOR'S BILL.**

The bill of complaint of J. R. Beaton Company, Inc., a corporation, respectfully shows to the Court, as follows:

(1) That the plaintiff, J. R. Beaton Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and brings this bill of

discovery and judgment creditor's bill on its own behalf as a judgment creditor of the defendant, Joseph A. Berberich.

(2) That the defendant, Joseph A. Berberich, is a citizen of the United States, a resident of the District of Columbia, and is sued as the judgment debtor of the plaintiff.

(3) That the defendants, May Berberich and Mary Catherine Berberich, are citizens of the United States, residents of the District of Columbia, and the sister and daughter, respectively, of the defendant, Joseph A. Berberich, and are sued in their own rights as having in their names or under their possession and control property belonging to the defendant, Joseph A. Berberich.

(4) That heretofore, to-wit, March 26, 1934, the plaintiff sued the defendant, Joseph A. Berberich, in the Supreme Court of the District of Columbia (now known as the District Court of the United States for the District of Columbia) said cause being entitled "J. R. Beaton Company, Inc., a corporation, plaintiff, v. Joseph A. Berberich, defendant," At Law No. 83836 and on, to-wit, April 23, 1934, the plaintiff obtained a judgment therein against the defendant, Joseph A. Berberich, in the full sum of \$2358.19 with interest at the rate of 6% per annum from May 23, 1931 and court costs amounting at this time to, to-wit, \$103.00, suit being filed and said judgment obtained by virtue of two promissory notes, each dated May 23, 1931, made, executed, and delivered by the said defendant, Joseph A. Berberich, and one Robert J. Berberich, and payable to the order of the plaintiff, one being payable 90 days after date in the amount of \$1176.58 with interest at 6%, and the other payable 120 days after date in the amount of \$1176.59 with interest at 6%. That thereafter a writ of *feri facias* was duly issued out of the law side of this Court

upon the said judgment, and was duly returned by the United States Marshal for the District of Columbia, to whom it was directed, endorsed "*nulla bona*," and the said judgment is still in full force and effect, unsatisfied and unreleased of record or otherwise, no part thereof having been paid or satisfied in any manner whatsoever, except to the extent of, to-wit, \$270.57 collected on, to-wit, August 6, 1936, as hereinafter more fully set forth.

(5) That the said defendant, Joseph A. Berberich has interests in real estate in the District of Columbia as is hereinafter more fully set forth, but title to the same, the plaintiff is advised and believes and believing avers, is now held in the name of his daughter, Mary Catherine Berberich, as is hereinafter more fully set forth.

(6) Until, to-wit, the 4th day of November, 1932, and while the defendant, Joseph A. Berberich was indebted to the plaintiff and after he made, executed, and delivered to the plaintiff the aforementioned promissory notes upon which the plaintiff's aforesaid judgment was obtained, the defendant, Joseph A. Berberich, held title in his own name to Lot 50 in James Martin's subdivision in lots in block No. 19 in Walbridge's subdivision, known as "Ingleside" as per plat of said Martin's subdivisions recorded in Liber 38 at Folio 153 of the records of the Office of the Surveyor of the District of Columbia, said block 19 being now designated for purposes of assessment and taxation as Square 2599, and being known as premises numbered 1801 Kenyon Street, Northwest, subject to a deed of trust to Harry L. Rust and George Calvert Bowie, trustees, dated, to-wit, March 15, 1930, recorded in Liber 6428 at Folio 225 of the land records for the District of Columbia, securing Pearl D. Clifford in the sum of \$8,000.00

due 3 years after date with 6% interest, payable semi-annually, and subject also to two subordinate judgment liens, one in favor of The Federal-American National Bank and Trust Company of Washington, District of Columbia, in the amount of, to-wit, \$33,600.00, and the other in favor of The Northern Trust Company, trustee, under the will of Henry Strong, deceased, in the amount of, to-wit, \$23,198.09. That on, to-wit, the 4th day of November, 1932, while the defendant, Joseph A. Berberich, was indebted to the plaintiff as aforesaid and after he made, executed, and delivered to the plaintiff the aforesaid promissory notes, the said trustees, Harry L. Rust and George Calvert Bowie, by deed dated the said 4th day of November, 1932, recorded in Liber 6698, at Folio 273, one of the land records for the District of Columbia, conveyed, assigned and transferred all their right, title, and interest in and to the said property to the defendant, May Berberich. Said deed recites that the said property was sold at public auction on October 10, 1932 to the said May Berberich for the sum of \$9,000.00 under the terms of the aforesaid deed of trust dated March 15, 1930 and recorded in Liber 6428 at Folio 225 as aforesaid. On the same date, to-wit, November 4, 1932, the defendant, May Berberich, made a new deed of trust to the said trustees, Harry L. Rust and George Calvert Bowie, covering the said property, said deed of trust being dated November 4, 1932 and recorded in Liber 6698 at Folio 275, and securing the said Pearl D. Clifford in the sum of \$7,000.00 due three years after date with 6% interest, payable semi-annually. That thereafter by deed dated, to-wit, April 2, 1935, recorded August 26, 1935 in Liber 6918 at Folio 570, the defendant, May Berberich, conveyed, assigned, and transferred to the defendant, Mary Catherine Berberich, all her right, title and interest in and to the said property and title of the same is now held in the name of

said defendant, Mary Catherine Berberich. That the said deed from the defendant, May Berberich, to the defendant, Mary Catherine Berberich, recites a consideration of \$10.00. The plaintiff is advised and believes, and believing avers that the said pretended public auction sale of the said property under the said deed of trust, aforesaid, and the said transfer to the defendant, May Berberich, pursuant thereto, and the said transfer from the defendant, May Berberich, to the defendant, Mary Catherine Berberich, were without consideration and for the sole purpose of attempting to hide and conceal assets of the said defendant, Joseph A. Berberich, and of defeating the rights of the plaintiff and other creditors, and are a fraudulent attempt to hinder, delay and defraud the creditors of the defendant, Joseph A. Berberich, including the plaintiff, in the collection of the debts justly due and owing from him to them and the plaintiff further avers that the said transfers were made with full knowledge on the part of the defendants, May Berberich and Mary Catherine Berberich, that the defendant, Joseph A. Berberich, was at the times of the transfers of said property indebted in large sums to the plaintiff and others. The plaintiff further says that at the time of the said pretended auction sale and for a long time prior thereto, the said property was occupied by the defendant, Joseph A. Berberich, as his home and after the said pretended auction sale he continued to occupy and still occupies the same as his home.

- 5 (7) That the defendant, Joseph A. Berberich, is possessed of an estate of curtesy in the following real estate in the District of Columbia, to-wit:
- Lot 802 Square 471 known as premises numbers 641 and
643 L Street, Southwest
- Lot 830 Square 551 known as premises numbers 1619,
1621, and 1623 Third Street, North-

west, and 1610 and 1612 Reeves
Court, Northwest

Lot 66 Square 357 known as premises number 909 W
Street, Northwest

Lot 44 Square 482 known as premises number 511 L
Street, Northwest

Lot 806 Square 512 known as premises number 419 N
Street, Northwest

Lot 11, also known as Lot 835, Square 2884 known as
premises number 909 Euclid Street,
Northwest

by virtue of the fact that he is the surviving husband of his wife, Rose M. Berberich, who died on, to-wit, December 24, 1918, seized in fee simple of the whole of each and all of the said real estate properties except said Lot 11, also known as Lot 835, Square 2884 in which he had an undivided one-half interest with one John W. Schaefer, and by the further fact that she left surviving her, seven children by her marriage with the defendant, Joseph A. Berberich.

(8) That on, to-wit, March 23, 1936, and for a long time prior thereto the defendant, Joseph A. Berberich, was and still is entitled by reason of his estate by curtesy in the said real estate properties, to receive and was receiving the rents, issues, and profits therefrom and at the said time and for a long time prior thereto one Lawrence J. Mills and one Charles S. Shreve, as agents for the defendant, Joseph A. Berberich, were in charge of renting and managing and collecting the rents, issues, and profits from said properties for the defendant, Joseph A. Berberich, to whom they regularly accounted and paid over the said rents. That on said date, March 23, 1936, the plaintiff caused several, to-wit, seventeen writs of attachments and garnishments to be issued upon the said judgment against the defendant, Joseph

A. Berberich, directed against the tenants of the said properties and the said rental agents and others and thereafter caused further writs of attachments and garnishments to be issued and served upon some of said tenants and rental agents; that the defendant, Joseph A. Berberich, resorted to divers fraudulent methods and means to hinder, defraud, and delay the plaintiff in its efforts to attach the rents, issues, and profits from the said properties and by such fraudulent methods and means did hinder, delay and defraud the plaintiff's attachments and garnishments of the said rents, issues, and profits, except to the extent of, to-wit, \$270.57, which was paid to the plaintiff on, to-wit, August 6, 1936, by the said agent, Lawrence J. Mills. The plaintiff is advised and believes, and believing avers that until May, 1935 and while the defendant, Joseph A. Berberich, was indebted to the plaintiff and after he made, executed and delivered to the plaintiff the aforementioned promissory notes upon which the plaintiff's aforesaid judgment against him was obtained, the defendant, Joseph A. Berberich, held the rent account pertaining to said properties in his own name and during, to-wit, the month of May, 1935, changed and transferred the said rent accounts from his own name to the name of the defendant, Mary Catherine Berberich, and that from that time to the present time the said rent accounts have been and still are held in the name of the defendant, Mary Catherine Berberich, and she has been and still is collecting and is in possession of the rents and profits of and from the said properties. The plaintiff is advised and believes, and believing avers that the said transfers were made by the defendant, Joseph A. Berberich, to the defendant, Mary Catherine Berberich, without consideration, and for the sole purpose of attempting to hide and conceal assets of the defendant, Joseph A. Berberich, and of defeating the rights of the

plaintiff and other creditors and are a fraudulent attempt to hinder, delay and defraud the creditors of the defendant, Joseph A. Berberich, including the plaintiff, in the collection of the debts justly due and owing from him to them, and the plaintiff further avers that the said transfers were made with full knowledge on the part of the defendant, Mary Catherine Berberich, that the defendant, Joseph A. Berberich, was at the time of the transfer of said accounts indebted in large sums to the plaintiff and others.

(9) That on, to-wit, the 15th day of November, 1918, the late Robert Berberich, who was the father of the defendants, Joseph A. Berberich and May Berberich, departed this life in the City of Washington, District
7 of Columbia, leaving a last will and testament under which he left a life estate in all its property, both real and personal, to his widow, Magdalena Berberich. Part of his estate was devised specifically to the defendants, Joseph A. Berberich and May Berberich, and others of his children; subject to the life estate of his widow, Magdalena Berberich. The residue of his estate also subject to the life estate of the said Magdalena Berberich, was devised to his five children, including the defendants, Joseph A. Berberich, and May Berberich, share and share alike. The defendant, Joseph A. Berberich and his brother, Robert J. Berberich were named executors under the will. Among the assets of the estate constituting the residue of the estate to be divided share and share alike between the children of the said Robert Berberich, as aforesaid, was an account in the Washington Permanent Building Association, which account was held in the joint names of the defendant, Joseph A. Berberich and his brother, Robert J. Berberich, as executors of the estate of their father, Robert Berberich, deceased, until, to-wit, December 14, 1931, when they trans-

ferred the account then in the amount of, to-wit, \$9,721.10 to the name of their mother, Magdalena Berberich, and on the following day, to-wit, December 15, 1931, the said Magdalena Berberich transferred the same account in the same amount to the name of the defendant, May Berberich and the said account remained in her name until, to-wit, January 30, 1935 at which time it was closed and the sum of, to-wit, \$9,224.21 was withdrawn by her, other sums having been withdrawn by her previous to that time. The plaintiff is advised and believes and believing avers that the said transfers were made without consideration and for the purpose of attempting to hide and conceal assets of the defendant, Joseph A. Berberich, and of defeating the rights of the plaintiff and other creditors and were and are a fraudulent attempt to hinder, delay and defraud the creditors of the defendant, Joseph A. Berberich, including the plaintiff, in the collection of the debts justly due and owing from him to them, and the plaintiff further avers that the said transfers were made with full knowledge on the part of the defendant, May Berberich, that the defendant, Joseph A. Berberich, was at the time of the transfers of said account indebted in large sums to the plaintiff and others.

(10) That the said Magdalena Berberich departed this life on, to-wit, the 18th day of October, 1934, and upon her death the defendant, Joseph A. Berberich, was entitled, under the terms of the will of the said Robert Berberich, deceased, to a distributive share of one-fifth of the assets constituting the residuary estate of the said Robert Berberich, deceased, including the said account in the Washington Permanent Building Association. The plaintiff is without specific knowledge with respect to the nature and amount of the said estate at the time of the death of the said Magda-

lena Berberich, deceased, except the said account in the Washington Permanent Building Association. The plaintiff is informed and believes, and believing avers that during, to-wit, January, 1935, the estate of the said Robert Berberich, deceased, was distributed among his children who were entitled to receive it under the terms of his said will, the said Magdalena Berberich, who was the life tenant under the terms of the said will, having died, and that at that time the defendant, Joseph A. Berberich was entitled to receive his distributive share of the said estate, but title to the same was taken without consideration and held and still is being held in the names of the defendants, May Berberich and Mary Catherine Berberich for the sole purpose of attempting to hide and conceal the assets of the said defendant, Joseph A. Berberich, and of defeating the rights of the plaintiff and other creditors and is a fraudulent attempt to hinder, delay and defraud the creditors of the defendant, Joseph A. Berberich, including the plaintiff,

9 in the collection of the debts justly due and owing by him to them, and the plaintiff further avers that the said transfers were made with full knowledge on the part of the defendants, May Berberich and Mary Catherine Berberich, that the defendant, Joseph A. Berberich, was at the time of the transfers of the said property indebted in large sums to the plaintiff and others.

(11) The plaintiff is advised that this Honorable Court will require full and complete disclosure respecting all and singular of the aforesaid transfers and a complete discovery by the defendants, Mary Catherine Berberich and May Berberich, of any supposed right, title, or interest which they or either of them may have acquired under the color of the aforesaid transfers, as well as of the circumstances attending each thereof, and further that this Honorable

Court will require the defendant, Joseph A. Berberich to make full and complete disclosure of any and all property, real or personal, which he now owns or has an interest in, and the description and location of all said property, and the name or names of any person or persons in whom title to the same or any part thereof is held.

WHEREFORE, THE PREMISES CONSIDERED, and being without a plain, adequate and complete remedy at law, the plaintiff prays as follows:

1. That a subpoena issue out of this Honorable Court directed to the defendants and each of them requiring them to appear and answer the exigencies of this bill of complaint.

2. That a receiver or receivers be appointed, *pendente lite*, to take immediate charge of the real estate described in paragraph 7 of this bill, to lease and manage the same, and to collect and hold the rents, issues, and profits therefrom, subject to the order of this Court.

3. That the defendants, Mary Catherine Berberich, and May Berberich, be decreed by this Court to be trustees or agents for the defendant, Joseph A. Berberich.

10 (4) That each and all of the aforesaid transfers be decreed fraudulent, be vacated, set aside, cancelled, and held for naught and that the alleged interests of the defendants, Mary Catherine Berberich and May Berberich be declared null and void and of no effect.

(5) That the defendants, Mary Catherine Berberich and May Berberich, be required to account for the rents, issues, and profits that they or either of them have received from

any and all of the properties described in this bill of complaint or any of them.

(6) That, if necessary, trustees or receivers be appointed to sell the interest and estate of the defendant, Joseph A. Berberich, in said real estate properties and to satisfy the plaintiff's judgment together with interest and taxable cost, including the expenses of this proceeding, and that the defendant, Mary Catherine Berberich, be compelled by appropriate order and decree to execute and deliver any and all necessary and proper conveyances and transfers of said real estate properties to such trustees or receivers.

(7) That the plaintiff be permitted to file interrogatories herein directed against the defendants and each of them, and that the said defendants and each of them be required, under oath, to true answer make to each and every question propounded to them.

(8) That the defendant, Joseph A. Berberich, be required to make full and complete disclosure of any and all property, real or personal, which he owns or has an interest in, and the description and location of all said property, and the name or names of any person or persons in whom title to the same or any part thereof is held.

11 (9) And for such other and further relief as to
the Court may seem meet and proper.

J. R. BEATON COMPANY, INC.,
By: ARTHUR A. LUNT,
(Title) *Vice Pres.*

City of New York }
 State of New York } ss.:

I, Arthur A. Lunt, do solemnly swear that I am Vice President of J. R. Beaton Company, Inc., a corporation, plaintiff in the foregoing bill of complaint and am authorized to make oath thereto on its behalf; that I have read the said bill which is by me subscribed, and know the contents thereof, and the facts therein stated upon personal knowledge are true and those stated upon information and belief, I believe to be true.

(s) ARTHUR A. LUNT.

SUBSCRIBED and SWORN to before me this 14th day of December, A. D. 1937.

(s) PAULINE DAVISON,
Notary Public, in and for the
City of New York, State of
New York, County of
 My commission expires Mar.
 30, 1939.

ARTHUR J. HILLAND,
 Shoreham Building,
Attorney for Plaintiff.

13 **Order to Amend Bill of Complaint.**

This cause having come on for hearing before the Court upon motion of the plaintiff, J. R. Beaton Company, Inc., to amend the bill of complaint filed herein by changing the name of the defendant, Mary Catherine Berberich to Mary

Catherine Lendeneau, the Court this 12th day of November, A. D. 1938

ORDERS that the said bill be and the same is hereby amended by changing the name of Mary Catherine Berberich to Mary Catherine Lendeneau.

JESSE C. ADKINS,
Justice.

33

Pretrial Proceedings.

STATEMENT OF NATURE OF CASE:

Suit to set aside certain conveyances claimed to be fraudulent as to plaintiff. Defendants deny any fraudulent conveyances, make general denial of allegations.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations, unless modified by the Court to prevent manifest injustice:

Defendants admit all allegations of paragraphs 1, 2, and 4, of complaint; defendants also admit all land records set out in paragraph 6.

Plaintiff is given leave at pretrial to amend paragraph 8 by changing date to read "1936".

It is understood at pretrial that defendant Mary Catherine Lindenau is now in Chili, South America; that delay

in trial of this case has been occasioned by absence of this defendant, who was formerly a resident of the Philippines.

Dated: June 5, 1941.

O. H. LUBRING,
Pretrial Justice.

Attorneys authorized to act:

A. J. Hilland,
Plaintiff,
Toomey & Toomey,
Vincent L. Toomey,
Defendant.

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Findings of Fact.

This action came before this Court on the 11th, 12th and 15th days of September, 1941; and was tried upon the record of the proceedings herein, and testimony and evidence adduced on behalf of the plaintiff, including the testimony of Joseph A. Berberich, the judgment debtor herein, and one of the defendants in this cause, who was called by plaintiff and examined relative to all and any property, real or personal, which he owns or has an interest in, and the description and location of the same, as well as the names of all persons in whom title to the same or any part thereof is held. That plaintiff filed no interrogatories as prayed in the bill of complaint.

At the conclusion of plaintiff's testimony a motion to dismiss was made on behalf of the several defendants, and after argument by both sides, was granted by the Court over objection of the plaintiff. The defendant, Mary Catherine Berberich (now married, name: Mary Catherine

Lindenou) was not present in Court. Her absence was explained by counsel for defendants, with a statement that she was now living on the interior of Bolivia, South America, in company with her husband, a metallurgical engineer, and that her attendance or disposition would involve great expense. Original service upon this defendant was accomplished by the voluntary appearance of counsel for the defendant in her behalf, and his willingness to waive any service by publication.

The case being fully considered, and being fully advised in the premises, it is, by the Court, this 22nd day of September, A. D. 1941:

FOUND AS FACTS.

1. The citizenship, residences and domiciles of the respective parties plaintiff and defendants are admitted by the pleadings herein.

2. That the plaintiff, J. R. Beaton Company, Inc., holds an unsatisfied judgment at law against the defendant, Joseph A. Berberich, in the sum of \$2,358.19 and costs, dated April 23, 1934, in Law Cause No. 83836 in the District Court of the United States for the District of Columbia, subject to a credit of \$270.57 dated August 6, 1936.

3. That Joseph A. Berberich was the owner of premises 1801 Kenyon Street, N. W., Washington, D. C., being Lot 50 in James Martin's subdivision in lots in block No. 19 in Walbridge's subdivision, known as "Ingleside" as per plat of said Martin's subdivisions recorded in Liber 38 at Folio 153 of the records of the Office of the Surveyor of the District of Columbia, said block 19 being now designat-

ed for purposes of assessment and taxation as Square 2599, for 22 years prior to October 10, 1932, when the same was sold at public auction to May Berberich, one of the defendants herein, for the sum of \$9,000.00, the same being sold by Harry L. Rust and George Calvert Bowie, Trustees under a certain deed of trust for \$8,000.00, given by the defendant, Joseph A. Berberich, under date of March 15, 1930, and recorded in Liber 6428 at folio 225 of the land records of the District of Columbia, to secure

Pearl D. Clifford. That the Trustees, Rust and
 36 Bowie, conveyed said property to the purchaser, May Berberich, under date of November 4, 1932, said conveyance being recorded in Liber 6698 at folio 273, one of the land records of the District of Columbia. That on the same day the said May Berberich made a new trust to the said Rust and Bowie, Trustees, covering the same property and recorded in Liber 6698 at folio 275 of the land records of the District of Columbia to secure Pearl D. Clifford in the sum of \$7,000.00. That on April 2, 1935, the said defendant, May Berberich, conveyed the same property unto the defendant, Mary Catherine Berberich (now Lindenau), which conveyance was recorded on August 26, 1935, in Liber 6918 at folio 570. That title to the said property still remains in the name of Mary Catherine Berberich (now Lindenau).

The property at 1801 Kenyon Street was the home of the defendant and his six children, as well as the home of the defendant May Berberich, sister of the defendant, Joseph A. Berberich, who lived at said premises with her aged and invalided mother, Magdalena Berberich. That said premises were also the home of the defendant, Mary Catherine Berberich (now Lindenau) who is a daughter of the defendant, Joseph A. Berberich.

That after the aforesaid foreclosure Joseph A. Berberich continued to occupy the premises 1801 Kenyon Street until three of his children were married and then went elsewhere to live, and a son who went to live in New Mexico because of a certain asthmatic condition, left home. That the defendant, May Berberich, continued to occupy these premises until after the death of her mother in 1935 when she bought and moved to a home at 1728 Lamont Street, N. W., to which address the defendant, Joseph A. Berberich, moved from 1801 Kenyon Street, N. W., in 1939. That Mary Catherine Berberich (now Lindenau) moved from said premises 1801 Kenyon Street a short time after her marriage in 1936.

That when the defendant, May Berberich, moved from premises 1801 Kenyon Street, N. W., 1935, she conveyed the property to the defendant, Mary Catherine Berberich (now Lindenau). That the said May Berberich purchased the property at public auction on October 10, 1932, and thereafter it was transferred to Mary Catherine Berberich (now Lindenau).

That since the defendant, Joseph A. Berberich, and his children, left the premises the same has been rented, and the rent paid to the account of Mary Catherine Berberich (now Lindenau).

4. That on December 24, 1918, Rose M. Berberich, wife of Joseph A. Berberich, died intestate, possessed in fee simple of the following real estate:

Lot 802 Square 471 known as premises Nos. 641 and 643
L Street, S. W.,

Lot 830 Square 551 known as premises Nos. 1619, 1621
and 1623 Third Street, N. W., and
1610 and 1612 Reeves Court, N. W.,

Lot 66 Square 337 known as premises No. 909 W. Street,
N. W.,

Lot 44 Square 482 known as premises No. 511 L Street,
N. W.,

Lot 806 Square 512 known as premises No. 419 N Street,
N. W.,

Lot 11, also known as Lot 835, Square 2884 known as
premises No. 909 Euclid Street, N.
W.,

and only a half interest in said Lot 11, also known as Lot 835 in Square 2884, with her brother, John W. Schaefer. That by virtue of leaving issue born of her marriage with Joseph A. Berberich, the said Joseph A. Berberich became entitled to an estate by the curtesy in all of said properties. That the gross income from all of said properties was about \$320.00 per month.

That in 1931, the defendant, Joseph A. Berberich, suffered severe financial losses, because of the involuntary bankruptcy of the Robert Berberich Sons, Inc., of which he was head. That he had encumbered his home at 1801 Kenyon Street in 1930, in order to raise money for this business, and from time to time had placed all his assets and property in this business in an effort to sustain and save the same. That involuntary proceedings were filed against his brother, Robert J. Berberich, who was also a member of the firm, but that no bankruptcy, voluntary or involuntary, issued against him.

That defendant, Joseph A. Berberich, failed to
38 pay taxes on the properties in which he held a
curtesy interest descending to him from his wife,
commencing in 1932 and continuing until 1935, the taxes
accrued and remained unpaid on these properties. In
March and May of 1935 the District of Columbia, as a

municipal corporation, issued tax deeds upon all of these properties. The defendant, Mary Catherine Berberich (now Lindenau) borrowed money and used some of the rents with which to purchase these taxes, and became entitled to tax deeds therefor. That the defendant, Joseph A. Berberich, commencing about 1931, failed to keep in good repair the various properties to which he was entitled to the estate by the curtesy. That with the outstanding tax deeds and the physical dilapidation of the properties, the defendant's children, as the persons entitled to the reversion or remainder interest, in 1936 asserted a forfeiture against the defendant, Joseph A. Berberich, of all interest which he possessed in said properties.

5. That the plaintiff, the judgment creditor, issued numerous garnishments against the rental agents and various tenants soon after the rendition of the judgment in 1934. The rental agent, Lawrence J. Mills, being possessed of rents due upon said properties and being notified of the adverse claims of the defendant, Joseph A. Berberich, the claim of forfeiture by his children and the various garnishments issued by the plaintiff, filed a bill of interpleader in this Court, making the defendant, Joseph A. Berberich, his six children and the plaintiff, J. R. Beaton Company, Inc., all defendants. This cause was subsequently dismissed. These proceedings were had in Equity Cause No. 61456 of the Supreme Court of the District of Columbia.

6. That from 1936 all rentals from the estate of Rose M. Berberich were deposited in the Riggs National bank to the credit of Mary Catherine Berberich (now Lindenau) and checked out by her until her departure from Washing-

ton. Before leaving Washington the said Mary Catherine Berberich (now Lindenau) executed a power of attorney, allowing her brother, Dr. Walter F. Berberich, 39 or her sister, Rose M. Berberich (now Rose N. Duckett) to check against the account.

The account was used to maintain the family table, pay school and university bills for the children, pay domestic help and defray the general family budget, including a contribution to their father of the sum of \$40.00 monthly for his board, \$15.00 per month for incidentals and a small allowance for clothing plus \$40.00 per month for room and board of the son, Richard, making approximately \$100.00 per month for such expenses.

After the interpleader suit in 1936, the rents were collected without the assistance of any rental agents until 1938, except that some rentals were collected by Joseph A. Berberich and some tenants paid at 1801 Kenyon Street, when H. H. Carter commenced to collect said rentals, which service is still continued by him.

7. Robert Berberich, father of the defendant, Joseph A. Berberich, died testate on November 15, 1918. A part of his estate consisted of a deposit in the Washington Permanent Building Association, of Washington, D. C. The defendant, Joseph A. Bierberich, and his brother, Robert J. Berberich, were co-executors under their father's will. The mother, Magdalena Berberich, possessed a life estate therein. On December 14, 1931, the balance of this account \$9,721.10 was transferred by the executors to their mother, Magdalena Berberich, and on December 15, 1931, this account was transferred by Magdalena Berberich to the defendant, May Berberich. Magdalena Berberich was

at that time an invalid. On January 30, 1935, this account having been reduced to \$9,224.21 and was entirely closed out. That from this sum the defendant, Joseph A. Berberich, was entitled to receive \$3,098.00 of which amount there was paid out as follows: \$2,498.00 to Mary Catherine Berberich (now Lindenau) for moneys advanced by her for the treatment of John William Berberich who was compelled to live in New Mexico because of an acute asthma condition; \$500.00 to May Berberich, the defendant herein, for
 40 moneys advanced by her in treating the mental disorders of Richard S. Berberich; and \$100.00 to William J. Walters for property repairs; this money was disbursed by Charles F. Ruppert.

8. That the said Mary Catherine Berberich (now Lindenau) for a long time prior to her marriage was employed as private secretary to Major General McIntyre, U. S. A., at a substantial salary. That Rose M. Berberich (now Rose M. Duckett) was also employed, and both contributed to the family budget.

JOHN McDUFFIE,
Justice.

Conclusions of Law.

The Court concludes as matters of law:

1. That the public auction sale of premises 1801 Kenyon Street, N. W., being Lot 50 in James Martin's subdivision in lots in block No. 19 in Walbridge's subdivision, known as "Ingleside" as per plat of said Martin's subdivisions recorded in Liber 38 at Folio 153 of the records of the Office

of the Surveyor of the District of Columbia, said block 19 being now designated for purposes of assessment and taxation as Square 2599, conducted on October 10, 1932, was free from fraud and wrongdoing by any of the defendants herein and was legally purchased by the defendant, May Berberich, and that the subsequent transfer to May Berberich on November 4, 1932, was in all respects legal.

2. That the transfer of said premises 1801 Kenyon Street, N. W., from the defendant, May Berberich, to the defendant Mary Catherine Berberich (now Lindenau), was valid and free from the fraud and wrongdoing of any of the defendants herein. That title to said property is lawfully and properly vested in Mary Catherine Berberich (now Lindenau).

3. That the estate by the curtesy vesting in the defendant, Joseph A. Berberich, by virtue of being the husband and widower of Rose M. Berberich, deceased, in the following parcels of real estate:

42 Lot 802 Square 472 known as premises Nos. 641
and 643 L Street, S. W.,

Lot 830 Square 551 known as premises Nos. 1619, 1621
and 1623 Third Street, N. W., and
1610 and 1612 Reeves Court, N. W.,

Lot 66 Square 357 known as premises No. 909 W. Street,
N. W.,

Lot 44 Square 482 known as premises No. 511 L. Street,
N. W.,

Lot 806 Square 512 known as premises No. 419 N Street,
N. W.,

Lot 11, also known as Lot 835, Square 2884 known as premises No. 909 Euclid Street, N. W.,

was forfeited to the children born of the marriage of Joseph A. Berberich and Rose M. Berberich as the remainder and reversion interests therein, by virtue of the failure of the defendant, Joseph A. Berberich, to pay taxes upon said property and the giving of tax deeds thereon by the District of Columbia, a municipal corporation, in March and May of 1935; as well as the failure to repair and properly maintain the improvements upon said real estate prior to 1935; that Court proceedings were not necessary to effect the forfeiture.

4. That the children born of the marriage of Joseph A. Berberich and Rose M. Berberich, now deceased, to wit: Mary Catherine Berberich, Rose M. Berberich, John W. M. Berberich, Walter F. Berberich, Charles E. Berberich and Richard S. Berberich, are entitled to all and any income, rents and profits from the aforesaid properties, their right to enjoy said income, rents and profits having been accelerated by the forfeiture of the estate by the curtesy formerly enjoyed by their father, Joseph A. Berberich.

5. That the transfer and division of moneys held in the Washington Permanent Building Association amounting to \$9,224.21, and formerly belonging to the estate of Robert Berberich, deceased, were lawfully transferred and divided on January 30, 1935, free from the fraud and wrongdoing of any of the defendants herein.

6. That the costs accrued herein to date, except as heretofore ordered herein, shall be paid by the plaintiff, J. R. Beaton Company, Inc. Due this 22nd September, 1941. Exceptions by the plaintiff are hereto attached and noted.

JOHN McDUFFIE,
Justice.

* * * * *

43 Plaintiff objects to the court's findings and conclusions of law on the grounds stated in open court and objects to the findings especially on the ground that the evidence does not support the findings and objects to the conclusions of law especially on the ground that the defendant Joseph A. Berberich could not have been divested of his estate by curtesy except by deed or judicial decree.

ARTHUR J. HILLAND,
Attorney for Plaintiff.

* * * * *

45

Final Judgment.

Filed Sept. 22, 1941.

This action came on to be heard before the Court, and was tried upon the record of the proceedings herein, and the testimony and evidence adduced on behalf of the plaintiff, as well as the testimony of the defendant, Joseph A. Berberich, offered by plaintiff for the disclosure of any and all property, real or personal, which he owns or has an interest in, and the description and location of all of said property, and the names of any person or persons in whom title to the same or any part thereof is held, and upon motion of defendants' counsel to dismiss said cause after oral argument having been made upon the legal and equitable principles applicable herein, and the cause being duly considered, and upon the Findings of Fact and Conclusions of Law made herein, it is, by the Court, this 22nd day of September, A. D. 1941,

ADJUDGED, ORDERED and DECREED, That the purchase of premises No. 1801 Kenyon Street, N. W., being Lot 50 in James Martin's subdivision in lots in block No. 19 in Walbridge's subdivision, known as "Ingleside" as per plat of said Martin's subdivisions recorded in Liber 38 at Folio 153 of the records of the Office of the Surveyor of the District of Columbia, said block 19 being now designated for purposes of assessment and taxation as Square 2599, at public auction on October 10, 1932, and the subsequent transfer thereof on November 4, 1932, to May Berberich was valid and free from fraud and wrongdoing of any of the defendants herein; and it is further

ADJUDGED, ORDERED and DECREED, That the subsequent transfer of said premises No. 1801 Kenyon Street, N. W., Lot 50 in James Martin's subdivision in lots in block No. 19 in Walbridge's subdivision, known as "Ingleside" as per plat of said Martin's subdivisions recorded in Liber 38 at Folio 153 of the records of the Office of the Surveyor of the District of Columbia, said block 19 being now designated for purposes of assessment and taxation as Square 2599, from May Berberich to Mary Catherine Berberich (now Mary Catherine Lindenau), on April 2, 1935, and recorded August 26, 1935, in Liber 6918 at folio 570, was valid and free from fraud and wrongdoing of any of the defendants herein; and be it further

ADJUDGED, ORDERED and DECREED, That the estate by the curtesy vesting in the defendant, Joseph A. Berberich, by virtue of being the husband and widower of Rose M. Berberich, deceased, in the following parcels of real estate:

Lot 802 Square 472 known as premises Nos. 641 and 643 L Street, S. W.,

Lot 830 Square 551 known as premises Nos. 1619, 1621
and 1623 Third Street, N. W., and
1610 and 1612 Reeves Court, N. W.,

Lot 66 Square 357 known as premises No. 909 W
Street, N. W.,

Lot 44 Square 482 known as premises No. 511 L
Street, N. W.,

Lot 806 Square 512 known as premises No. 419 N
Street, N. W.,

Lot 11, also known as Lot 835, Square 2884 known as
premises No. 909 Euclid Street, N.
W.,

was forfeited to the children born of the marriage of Joseph
A. Berberich and Rose M. Berberich as the remainder and
reversion interests therein, by virtue of the failure of the
defendant, Joseph A. Berberich, to pay taxes upon said
property and the giving of tax deeds thereon by the Dis-
trict of Columbia, a municipal corporation, in March and
May of 1935; as well as the failure to repair and
47 properly maintain the improvements upon said real
estate prior to 1935; and be it further

ADJUDGED, ORDERED and DECREED, That the chil-
dren born of the marriage of Joseph A. Berberich and Rose
M. Berberich, now deceased, to wit: Mary Catherine Ber-
berich, Rose M Berberich, John W. M. Berberich, Walter
F. Berberich, Charles E. Berberich and Richard S. Ber-
berich are entitled to all and any income, rents and profits
from the aforesaid properties, their right to enjoy said in-
come, rents and profits having been accelerated by the for-
feiture of the estate by the curtesy formerly enjoyed by
their father, Joseph A. Berberich; and be it further

ADJUDGED, ORDERED and DECREED, That the
transfer and division of moneys held in the Washington

Permanent Building Association amounting to \$9,224.21, and formerly belonging to the estate of Robert Berberich, deceased, were lawfully transferred and divided on January 30, 1935, free from fraud and wrongdoing by any of the defendants herein; and be it further

ADJUDGED, ORDERED and DECREED, That the bill of complaint be and the same is hereby dismissed, and that the costs herein accrued to date be paid by the plaintiff, J. R. Beaton Company, Inc.

JOHN McDUFFIE,
Justice.

Plaintiff objects to both
the substance and form
of this judgment.

ARTHUR J. HILLAND,
Attorney for Plaintiff.

**48 Motion for a New Trial and to Amend Findings
 of Fact and Conclusions of Law.**

The plaintiff, J. R. Beaton Company, Inc., a corporation respectfully moves the Court to grant a new trial in the above entitled action and to amend its findings of fact and conclusions of law, and as grounds therefor says:

1. The Court erred in granting the defendants' motion to dismiss at the conclusion of the plaintiff's evidence.

2. The Court erred in ruling that the plaintiff's evidence failed to make out a *prima facie* case.

3. The Court erred in considering the tax deeds when they had not been offered in evidence.

4. The Court erred in ruling that the estate by courtesy of the defendant, Joseph A. Berberich, was forfeited to the children born of the marriage of Joseph A. Berberich and Rose M. Berberich as the remainder and reversion interests therein, by virtue of the failure of the defendant, Joseph A. Berberich, to pay taxes upon said property and the giving of tax deeds thereon by the District of Columbia, a municipal corporation, in March and May of 1935; as well as the failure to repair and properly maintain the improvements upon said real estate prior to 1935; that the Court proceedings were not necessary to effect the forfeiture.

49 5. The Court erred in ruling that the purchase of premises 1801 Kenyon Street, Northwest, by the defendant, May Berberich, and the subsequent transfer thereof by her to the defendant, Mary Catharine Berberich Lindenau, were free from fraud and wrongdoing and were legal.

6. The Court erred in ruling that the children of the defendant, Joseph A. Berberich, are entitled to any and all income, rents and profits from the properties in which the defendant, Joseph A. Berberich, acquired an estate by curtesy.

7. The Court erred in ruling that the transfers of \$2,498.00 to Mary Catharine Berberich Lindenau, and \$500.00 to the defendant Mary Berberich, were lawful and free from fraud and wrongdoing.

8. The Court's findings of fact, conclusions of law and judgment are contrary to the law and the evidence.

9. The Court's findings of fact are not supported by the evidence.

10. Other reasons apparent of record.

ARTHUR J. HILLAND,
DEWITT S. HYDE,
Shoreham Building,
Attorneys for Plaintiff.

Service of a copy of foregoing motion and points and authorities hereto appended is hereby acknowledged this 1st day of October, 1941.

VINCENT L. TOOMEY.

* * *

50 This cause coming on to be heard upon the motion for a new trial and to amend Findings of Fact and Conclusions of Law, as well as the objections to the Findings of Fact and Conclusions of Law, the same being considered by the Court, the Court is of the opinion that the motion for a new trial as well as to amend the Findings of Fact should be overruled; that the objections to the Findings of Fact and Conclusions of Law should be overruled.

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that the same be, and are hereby overruled. To this action of the Court an exception by the Plaintiff is noted.

DONE this 17th day of October, 1941, at Mobile, Alabama.

JOHN McDUFFIE,
Justice.

Statement of Evidence.

At the hearing of the above-entitled action on the 11th, 12th and 15th days of September, 1941, before Mr. Justice McDuffie, the following proceedings were had, evidence offered and given, rulings made by the Court, and objections made by the plaintiff:

At the commencement of the case the following motion was made by counsel for defendants:

That the testimony in the trial must be restricted to two categories of property:

1. The building association moneys.
2. The real estate located at 1801 Kenyon Street, N. W.

The third category should not be considered by the Court because it involved the question of abandonment and forfeiture of the curtesy estate to the six children of the defendant, Joseph A. Berberich, five of whom had not been made parties to this cause. The defendant, Mary Catherine Berberich (now Lindenau), had informed the Court in her answer that the six children had claimed an abandonment and forfeiture of the curtesy against their father, for failure to pay taxes, permitting tax deeds to be issued and failure to make repairs. Upon this motion the Court reserved its action until it heard the testimony.

52 The Court was then informed that no service upon Mary Catherine Berberich now (Lindenau) was obtained. That said Mary Catherine Berberich (now Lindenau) was at the time of the filing of this cause living in the Philippine Islands, with her husband, a metallurgical engi-

neer. That an attempt had been made to obtain service by publication against her. That counsel for Mary Catherine Berberich (now Lindenau) informed counsel for plaintiff that such service was faulty because of no publication in the Washington Law Reporter, as required by law. That counsel for plaintiff was further informed that service against this defendant was unnecessary as she would file her answer in the cause without service against her. That at the time of the trial of this cause this defendant was not present in Court as she was then living in Bolivia, South America, with her husband, and her attendance or deposition would be too expensive.

Defendants admitted that plaintiff is a corporation; that it has an unsatisfied judgment against the defendant, Joseph A. Berberich, for \$2,358.19 with interest from May 23, 1931 and costs, less a credit of \$270.57 on August 6, 1936; that the judgment was obtained April 23, 1934; that the debt was incurred May 23, 1931; that a writ of *feri facias* had been issued and returned *nulla bona*; that the defendant, May Berberich, is a sister and the defendant, Mary Catherine Berberich Lindenau, a daughter of the defendant, Joseph A. Berberich; that at the times of the transactions alleged in the bill of complaint, the defendant, Joseph A. Berberich, was in financial difficulties and had no assets other than those mentioned in the bill of complaint.

Plaintiff offered in evidence the records No. 25293 of the Probate Branch of the District Court of the United States for the District of Columbia in the estate of Robert Berberich, deceased, father of the defendants, 53 Joseph A. Berberich and May Berberich, which showed that the decedent died on November 15, 1918, and that on December 13, 1918 letters testamentary were granted to

the defendant, Joseph A. Berberich, and Robert J. Berberich. The will of Robert Berberich, deceased, after directing the payment of his debts and one specific bequest in the amount of \$100.00, devised and bequeathed the remainder of his estate to his wife, Magdalena Berberich, during her life and upon her death, parts of the estate were given to his sons, other parts to his daughters and others, and with respect to the parts not specifically bequeathed or devised, upon Magdalena Berberich's death, the will directed as follows:

“The rest and residue of my estate I give and bequeath, share and share alike, to my children, Robert J. Berberich, Joseph A. Berberich, Rosa Ruppert, Anna Ruppert, and May Berberich.”

The will named his sons Robert J. Berberich and Joseph A. Berberich executors thereof. The record did not contain any account by the executors showing what assets came into their hands or how the assets were disbursed, except the petition for probate of the will and letters testamentary disclosed the real property owned by the decedent was of the estimated value of \$45,000.00 and the personal property of the estimated value of \$20,000.00, including shares of stock in building associations amounting to about \$2,295.51.

Plaintiff offered in evidence the records No. 25781 of the Probate Branch of the District Court of the United States for the District of Columbia in the estate of Rose M. Berberich, deceased, which showed that she died on December 24, 1918 and was survived by her husband, the defendant, Joseph A. Berberich, and seven children born of their marriage, and that at the time of her death, she owned all the

property described in Paragraph 7 of the plaintiff's bill of complaint.

54 Plaintiff offered in evidence the records of the District Court of the United States for the District of Columbia in Federal-American National Bank and Trust Company, plaintiff, vs. Joseph A. Berberich, Robert J. Berberich, and Robert Berberich Sons, Inc., a corporation, defendants, Law No. 79549, showing that on June 1, 1931 judgment was entered against the defendants by default for \$33,600.00 with interest from April 16, 1931 to April 20, 1931 less a credit of \$2,877.98 and with interest on the balance from April 20, 1931, plus a protest fee of \$2.11 and costs, and that it remains unsatisfied.

Plaintiff offered in evidence the records of the District Court of the United States for the District of Columbia in Northern Trust Company, trustee, plaintiff, vs. Joseph A. Berberich, Robert J. Berberich, and Robert Berberich Sons, Inc., a corporation, defendants, Law No. 79552, showing that on June 1, 1931 judgment was entered against the defendants by default for \$23,198.09, plus interest and costs, and that it remains unsatisfied.

Plaintiff offered in evidence the records of the District Court of the United States for the District of Columbia holding a Bankruptcy Court in the matter of Robert J. Berberich, a bankrupt, Bankruptcy No. 2564, showing that in Schedule B-4 relating to "Property in reversion, remainder or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge", that the bankrupt stated, under oath, that he had no such property or interest, and showing further in the "Summary of debts and assets" that the bankrupt stated that he had no property in reversion, remainder, trust, etc.

Plaintiff offered in evidence the records of the District Court of the United States for the District of Columbia in J. R. Beaton Company, Inc., a corporation, plaintiff, vs. Joseph A. Berberich, defendant, Law No. 83,836, 55 showing that on April 23, 1934, judgment was entered by default against the defendant, Joseph A. Berberich, for \$2,358.19 with interest from May 23, 1931 and costs and showing a credit thereon of \$270.57 on August 6, 1936; that the judgment was based on a note dated May 23, 1931 made by Joseph A. Berberich and Robert J. Berberich; that a writ of *feri facias* was issued and returned *nulla bona* on November 17, 1937; that on March 23, 1936 a writ of attachment and garnishment was issued and served on seventeen garnishees, namely: Charles S. Shreve, 1001 Fifteenth Street, Northwest, who answered the writ in the negative; Lawrence J. Mills, 430 Fifth Street, Northwest, who answered the writ in the negative; Samuel Ferguson, 641 L Street, Southwest, who answered that he was indebted to Joseph A. Berberich for one month's rent in the amount of \$22.75, that he leased the property June 22, 1934 for one year from Mills and Company, Fifth and E, Northwest, for \$22.75 paid monthly; Perpetual Building Association, 500 Eleventh Street, Northwest, which answered the writ in the negative; Albert Hudson, 419 N Street, Northwest, who answered the writ in the negative, but stated that he rented premises 419 N Street, Northwest, by the month at \$18.00 per month payable on the first day of each month to Charles S. Shreve, agent, in advance; James Briggs, 1621 Third Street, Northwest, who did not answer the writ either in the positive or negative, but stated that he rented the premises at 1621 Third Street, Northwest, at \$35.75 per month payable on the twenty-third day of each month to Mr. Mills, 430 Fifth Street, Northwest; Thomas Suggs, 1623 Third Street, Northwest, who answered the writ that

he was indebted to Joseph A. Berberich in the sum of \$35.75 less a credit of \$6.50 for work done, and that he rented premises 1623 Third Street, Northwest, from month to month at \$35.75 per month payable monthly to Lawrence J. Mills on the twenty-sixth day of each month, usually paid on the first of the month; Sofie Strange, 909 W
 56 Street, Northwest, who answered the writ in the negative, but stated that she rented premises 909 W Street, Northwest, by the month at \$17.50 per month payable monthly in advance, and that her lessor was Charles S. Shreve; May Berberich, 1801 Kenyon Street, Northwest, who answered the writ in the negative; Thomas Maidlo, 511 L Street, Northwest, who answered the writ in the negative, "except the forthcoming rent due April 20, 1936", and he further stated that he rented the house without a lease, making monthly payments of \$60.75 due on the twentieth day of each month to Lawrence J. Mills, real estate, at 430 Fifth Street, Northwest, Washington, D. C.; Ernest Emerson, 909 Euclid Street, Northwest, who answered that he was indebted to Joseph A. Berberich in the sum of \$25.75 and that he had rented premises 909 Euclid Street, Northwest, about four years with no agreement, payable monthly usually on the first of the month to Lawrence J. Mills; Mrs. Anna Ruppert, 1832 Lamont Street, Northwest, who answered the writ in the negative; Rose Berberich, 1801 Kenyon Street, Northwest, who answered the writ in the negative; American Security and Trust Company, Fifteenth and Pennsylvania Avenue, Northwest, which answered the writ in the negative, except for a balance on deposit in the amount of \$.65; F. B. Earp, 643 L Street, Southwest, who answered that he was indebted to Joseph A. Berberich in the amount of \$25.50, but the rent is due the first of the month to James L. Mills; Edward Parker, 1619 Third Street, Northwest, who answered that he was indebted to

Joseph A. Berberich for one month's rent in the amount of \$35.75; that he rented premises 1619 Third Street, Northwest, from month to month from November 11, 1932 at \$35.75 payable on the eleventh day of each month to Mr. J. L. Mills; and Washington Permanent Building Association, a corporation, 629 F Street, Northwest, which answered the writ in the negative, except that it stated the

57 Association had a closed account previously in the name of Robert Berberich, which account was transferred on December 4, 1931 by Joseph A. Berberich and Robert J. Berberich, executors of the estate of Robert Berberich, deceased, to the name of Magdalena Berberich, who on December 15, 1931 transferred the same account to the name of May Berberich, in whose name the account remained until January 30, 1935, when it was closed; that the amount transferred on December 14, 1931 was \$9,179.14 and the same amount was transferred on December 15, 1931; that on May 2, 1932 there was a withdrawal of \$7,000.10, and on November 20, 1934, a withdrawal of \$1,200.29, and that on January 30, 1935 when the account was closed, there was a withdrawal of \$9,224.21.

The record further shows that on April 20, 1936 another writ of attachment and garnishment was issued naming Thomas Maidlow, 511 L Street, Northwest, as garnishee, who answered that premises 511 L Street, Northwest, was rented in the name of his wife, Mrs. Thomas Maiolo, for \$60.75 per month, and that rent for the month commencing April 20, 1936 was owing at that time.

The record further shows that on April 25, 1936 another writ of attachment and garnishment was issued naming Lawrence J. Mills, 430 Fifth Street, Northwest, as garnishee, and that he answered that he was indebted to Joseph

A. Berberich in the sum of \$30.00 for rent of 511 L Street, Northwest, for the month ending May 19, 1936 in the amount of \$60.75, plus \$1.75 costs and minus an indebtedness in the amount of \$32.34.

The record further shows that on May 13, 1936 another writ of attachment and garnishment was issued naming Lawrence J. Mills, 430 Fifth Street, Northwest, as garnishee, and that he answered on May 19, 1936 that he was indebted to Joseph A. Berberich for rents collected in the amount of \$322.75 less expenses and landlord and tenant court costs, including commission on rents amounting to \$52.18, making a net amount on hand of \$270.57.

58 The record further shows that on August 5, 1936 another writ of attachment and garnishment was issued naming Lawrence J. Mills as garnishee and that he answered the writ in the negative.

The record further shows that on August 19, 1936 another writ of attachment and garnishment was issued naming three garnishees; namely, Mrs. Thomas Maiolo, 511 L Street, Northwest, and that she answered the writ in the negative, except that she said she owed rent for premises 511 L Street, Northwest, in the amount of \$60.75 due August 20, 1936 and paid August 20, 1936; James Briggs, 1621 Third Street, Northwest, who answered the writ in the negative, except that he stated he owed rent for premises 1621 Third Street, Northwest, in the amount of \$35.75 due August 21, 1936 and paid August 21, 1936; Samuel Ferguson, 641 L Street, Southwest, who answered the writ in the negative, except that he stated he owed rent for premises 641 L Street, Southwest, in the sum of \$22.75 due August 22 and paid August 22, 1936.

The record further showed that on May 5, 1936 judgments of condemnation against the garnishees were entered as follows:

Samuel Ferguson for	\$22.75
James Briggs for	33.75
Thomas Suggs for	35.75
(less credit of \$6.50)	
Ernest Emerson for	25.75
F. B. Earp for	25.50
Edward Parker for	35.75

and a judgment of condemnation on August 5, 1936 against the garnishee, Lawrence J. Mills for \$270.57, none of which judgments of condemnation were satisfied except the judgment of condemnation against the garnishee, Lawrence J. Mills.

The record further shows that on April 8, 1936, the defendant, Joseph A. Berberich, filed the following motion and affidavit:

“ * * * MOTION TO QUASH GARNISHMENT.

Now comes the defendant, Joseph A. Berberich, by his attorneys, Toomey & Toomey, and moves the Court
59 to quash the writs of garnishment issued in the above entitled cause, and for reasons therefor says:

1. That the moneys reported in the hands of the various garnishees are rents due and payable to the defendant by virtue of an estate by the curtesy.

2. That the defendant is entitled to an estate by the curtesy because of the intestacy of Rose Berberich, his wife, now deceased, who died leaving issue capable of inheriting, the issue of this defendant and the said Rose Berberich, deceased.

3. That moneys, rents or profits derived from an estate by curtesy cannot be the subject of garnishment.

TOOMEY & TOOMEY,
By VINCENT L. TOOMEY,
Attorneys for Defendant,
Joseph A. Berberich."

AFFIDAVIT OF JOSEPH A. BERBERICH.

District of Columbia, ss.:

Personally appeared Joseph A. Berberich, who being first duly sworn, does depose and say that he is the defendant named in the above entitled cause of action, in which J. R. Beaton Company, Inc., a corporation, is named as plaintiff; defendant avers that he is the owner of an estate by the curtesy created by virtue of the death of Rose Berberich, his wife, who died intestate December 24, 1918; that the said Rose Berberich, deceased, had born to her eight children capable of inheriting and to whom defendant was father; that at the time said Rose Berberich died she left surviving seven children, six of whom now live; that the remainder interest in said property is in said children; that the moneys now held by the garnishees are for rents due defendant by virtue of said estate by the curtesy created as aforesaid.

JOSEPH A. BERBERICH.

60 "Subscribed and sworn to before me this 8th day of April, 1936.

FRANK E. CUNNINGHAM,
Clerk,
By ANDREW A. HORNER,
Asst. Clerk."

Plaintiff called as a witness Mr. Scott M. Birdsong, who being first duly sworn, testified in substance as follows: that he is an employee of Washington Permanent Building Association and appeared as a witness in response to a subpoena *duces tecum* directing the Building Association to produce the records of their account in the name of Robert Berberich, and that he has produced the records as far back as 1926. The records were introduced in evidence and in substance showed that from February 5, 1926 to December 14, 1931 the account was in the name of Robert Berberich; that on December 14, 1931 Joseph A. Berberich filed with the Building Association a certificate of the Register of Wills for the District of Columbia and Clerk of the Probate Court showing that on December 19, 1918 Robert J. Berberich and Joseph A. Berberich qualified as executors of the estate of Robert Berberich, deceased, and on the said date, December 14, 1931, Joseph A. Berberich as executor of the estate of Robert Berberich, deceased, executed a written assignment which was offered in evidence whereby in substance he transferred and assigned \$9,197.14 to the credit of Robert Berberich, deceased, to Magdalena Berberich. Another written assignment dated December 15, 1931 showed that on December 15, 1931 Magdalena Berberich transferred and assigned the sum of \$9,197.14 in the account to May Berberich.

The ledger sheets showed a balance of \$9,721.10 in the account as of January 6, 1931, which included a deposit of \$25.00 on that date and a dividend in the amount of \$498.96. From February 1, 1932 to January 30, 1935 when the account was closed, the ledger sheet showed balances, deposits and withdrawals as follows:

61	February 1, 1932	Balance.....	\$ 9,721.10
	February	Deposit....	\$ 25.00
	March	Deposit....	25.00

April		Deposit	25.00	
May		"	25.00	
June		"	25.00	
June 12		"	6,220.00	
July		"	25.00	
August		"	25.00	
September		"	25.00	
October		"	25.00	6,445.00
				\$16,166.10
May	2, 1932	Withdrawal	7,000.00	
				\$ 9,166.00
		Dividend	383.84	
February	1, 1933	Balance	\$ 8,549.84	
		Dividend	477.45	
February	1, 1934	Balance	\$10,027.29	
November	20, 1934	Withdrawal	1,200.29	
				\$ 8,827.00
		Dividend	397.21	
January	30, 1935	Balance	\$ 9,224.21	
January	30, 1935	Withdrawal	9,224.21	

Mr. Birdsong also produced and there was received in evidence a check dated May 2, 1932 No. 45352 drawn by Washington Permanent Building Association on the Second National Bank of Washington, D. C. to the order of May Berberich in the amount of \$7,052.60. The check bears the following endorsements:

“May Berberich

For deposit to the credit of Fred J. Eden
Referee in Bankruptcy, in re: Robert J.
Berberich, Bkey. No. 2564
Fred J. Eden”

The witness also produced and there was received in evidence a check dated November 20, 1934 No. 1028 drawn by Washington Permanent Building Association on The Riggs National Bank of Washington, D. C., to the order of May Berberich in the sum of \$1,227.29, which bears the endorsement of “May Berberich”.

62 The witness also produced and there was received in evidence a check dated January 30, 1935 No. 1489 drawn by Washington Permanent Building Association on The Riggs National Bank of Washington, D. C. to the order of May Berberich, Annie C. Ruppert and Rose B. Ruppert in the sum of \$9,224.21 and bears the endorsements of the payees and “Charles F. Ruppert”.

Thereupon, Charles S. Shreve was called as a witness for the plaintiff and after being first duly sworn, testified in substance as follows: That he is a member of the Bar of the District of Columbia and engaged in the practice of law and also engaged in the real estate business; that he is here in response to a subpoena *duces tecum* to produce his accounts and cancelled checks relating to rents collected for Joseph A. Berberich; that he collected rents on premises 1608 Reeves Court, Northwest, 1419 N Street, Northwest, and 909 W Street, Northwest; that he began collecting rents for Miss May Berberich from said premises from 1926 to December, 1930; that from December, 1930, he collected rents from said premises in the name of Joseph A. Berberich until March 16, 1936; that on April 4, 1936 he

turned over all rent agreements for said premises to Joseph A. Berberich in his (the witness's) office.

The witness's ledger sheets (three in number written on both sides) were offered and received in evidence and showed in substance as follows: That the account was carried in the name of "Joseph A. Berberich, 12th & F Sts., N. W." from the first date of the ledger sheet; namely, December 13, 1930 through April 4, 1936, the date of the last entry. On the top of the first ledger sheet the words "Mary C. Berberich, agent" appeared. On the upper lefthand corner of the first ledger sheet the words "Est. Rose M. Berberich" appeared. The ledger sheet showed that from December 13, 1930 to January 31, 1934, the witness collected rents as follows:

63	W. Lyons, 1608 Reeves Court, ...	\$15.00 per month
	R. Simmons, 419 N Street, N. W.	18.00 per month
	S. Strange, 909 W Street, N. W.	17.50 per month

and from January 31, 1934 to March 31, 1936, as follows:

	S. Strange, 909 W Street, N. W.	\$17.50 per month
	A. Hutchinson, 419 N Street, N. W.	18.00 per month
	W. Lyons, 1608 Reeves Court	15.00 per month

The ledger sheet showed disbursements by Mr. Shreve for water rent and repairs, as follows:

12/28/31	water bill, 909 W Street, N. W.	\$ 8.75
5/13/32	T. E. Clark, plumber	12.10
4/16/35	water bills, 1608 Reeves Court	6.56
4/16/35	water bills, 419 N Street, N. W.	6.56
4/16/35	water bills, 909 W Street, N. W.	6.56

The ledger sheet showed disbursement of all the remainder of rents collected to Joseph A. Berberich, less the

agent's commission of 5% on the amounts collected. The ledger sheets contained the following notations:

1/30/34 "Joe said he paid Clark plumbing bills".

8/26/35 "I returned to Joseph A. Berberich two forms of deed from May Berberich to Mary Catherine Berberich, lot 50 block 19 Ingleside square No. 2599, as I received the same from Joe Berberich."

1/22/36 "Water bills 909 W St. delivered to owner."

3/23/36 "Garnishment Law No. 83,836 J. R. Beaton Company, Inc. v. Joseph A. Berberich, credits in my hands, Mch. 24, 1936, I answered both interrogatories, no. None. Arthur J. Hilland, Atty."

4/ 4/36 "Turned over all agreements to Joseph A. Berberich in my office."

The witness produced and 115 cancelled checks were received in evidence. The first check was dated December 13, 1930 and the last check was dated March 16, 1936. Each and all the checks were drawn by the witness, Charles S. Shreve, and were made payable to Joseph A. Berberich and bore his endorsements, except a check dated October 12, 1931 made payable to Mary C. Berberich, agent, and endorsed by her in the amount of \$33.75, a check dated October 23, 1931 in the amount of \$14.25 also made to and endorsed by her, a check dated November 17, 1931 in the amount of \$48.00 made to and endorsed by her, and
64 a check dated November 24, 1934 payable to Mary M. Berberich, agent for Joseph A. Berberich, in the amount of \$44.45 endorsed by her.

The witness further testified that he stopped collecting the rents from the above-mentioned properties at the direction of Joseph A. Berberich.

On cross-examination, the witness testified that from 1926 to 1930 his checks were made payable to May Berberich; that he was not sure why the account was carried in her name and the checks made payable to her during that period, but his recollection is that Joseph A. Berberich had a break in his health during that time.

Thereupon, the plaintiff called Mr. Lawrence J. Mills, who being first duly sworn, testified in substance as follows: That he is engaged in the real estate business and is here in response to a subpoena *duces tecum* to produce his records of rents collected for Joseph A. Berberich and that he has produced the records; that he collected rents for Joseph A. Berberich on an account in the name of the estate of Rose Berberich, wife of Joseph Berberich, and that his accounts commenced on November 7, 1930; that he collected rents on the following properties:

- 1619 Third Street, Northwest
- 1621 Third Street, Northwest
- 1623 Third Street, Northwest
- 641 L Street, Southwest
- 643 L Street, Southwest
- 1610 Reeves Court, Northwest
- 1612 Reeves Court, Northwest
- 909 Euclid Street, Northwest
- 511 L Street, Northwest

that he began to pay over the rents to Joseph A. Berberich in 1930 and continued to do so to August 6, 1936; that on April 25, 1935, the account was changed to the name of Miss Mary C. Berberich; that collection of rents was taken out of his hands on August 6, 1936, that after garnishments were served on tenants in March and April, 1936, he does not remember going to see the tenants with Mr. Berberich, but he remembers that he filed suits against the tenants for nonpayment of rent after

they had been served with writs of garnishment. The witness identified the records from the Municipal Court of the District of Columbia, which showed that he brought suits against the tenants for possession for non-payment of rent after writs of attachment on the judgment in favor of Beaton Company against Berberich were served on the tenants; that at that time he was not dealing with anyone other than Joseph A. Berberich in relation to the houses from which he was collecting rents, and that he dealt with Joseph A. Berberich as the owner thereof; that he had no transactions whatever with Mary C. Berberich, except that the account was put in her name; that he never saw Mary C. Berberich in his office; that Joseph A. Berberich got the rent checks from his office, that he discontinued collection of the rents after garnishments were served on him; that the account became too troublesome and he turned over the account and rent agreements to Joseph A. Berberich.

The witness produced and there were received in evidence two sets of ledger sheets. The first set consisted of fifteen sheets each filled up on both sides except the last, the sheets being numbered from 18 to 32 inclusive. All the ledger sheets in this group bore the name "Estate of Rose Berberich, check to Joseph Berberich, 1801 Kenyon St., N. W.", except ledger sheet numbered 32, which bore the name "Miss Mary C. Berberich, 1801 Kenyon St., N. W." and the first entry thereon (sheet No. 32) was dated August 5, 1936 and the last entry thereon, dated August 6, 1936. The second set of ledger sheets consisted of four sheets, all of which were filled on both sides except the last. The sheets were numbered from 1 to 4 and bore the name "Miss Mary C. Berberich, 1801 Kenyon St., N. W." The first set of ledger sheets numbered from 18 to 32 commence with the date November 4, 1930 and show collections

of rents from the properties managed by the witness, Lawrence J. Mills, and disbursements, as follows:

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<u>RENTS COLLECTED</u>		<u>DISBURSEMENTS</u>				
		Repairs	Court Costs	Collector of Taxes, D. C., water rent	Agent's Commission	To Joseph A. Berberich
<i>1930</i>						
Nov.	\$223.30	\$	\$ 5.70	\$	\$ 11.17	\$204.33
Dec.	161.00		3.60		8.08	149.82
<i>1931</i>						
Jan.	229.85		3.85		11.49	214.51
Feb.	212.25				10.61	201.64
Mch.	222.50	3.38			11.13	207.99
Apr.	212.35				10.61	201.64
May	224.50				11.22	213.28
Jne.	259.50				12.98	246.52
July	278.75		2.10		13.93	262.72
Aug.	210.35		2.10		10.52	197.73
Sept.	270.50	7.75	3.60		13.53	240.99
Oct.	252.05	81.53	4.20		12.32	178.75
Nov.	267.03	61.00			13.25	192.68
Dec.	223.97	83.85	4.20		10.92	125.00
<i>1932</i>						
Jan.	239.11	32.01	2.10	63.75	11.47	124.26
Feb.	162.75	44.50	4.20		8.14	105.91
Mch.	323.80	38.60	5.70	21.70	15.49	228.31
Apr.	234.20	76.27	2.10		11.71	135.12
May	206.35		4.20		10.32	191.83
Jne.	244.00	40.00	2.10		12.20	189.70
July	261.60	23.50	14.20		13.08	220.82
Aug.	236.55	68.97	2.10		11.87	145.15
Sept.	196.10		9.90		9.80	174.03
Oct.	179.34	35.00	7.20		7.14	130.00
Nov.	279.05	10.63	8.40		13.95	224.58
Dec.	228.30		1.50	17.50	11.41	197.79

<u>RENTS COLLECTED</u>		<u>DISBURSEMENTS</u>				
		Repairs	Court Costs	Collector of Taxes, D. C., water rent	Agent's Commission	To Joseph A. Berberich
<i>1933</i>						
Jan.	226.20	10.73	7.80		11.31	196.36
Feb.	261.64		7.80	20.79	12.52	221.23
Mch.	222.06		6.30	41.95	11.06	162.75
Apr.	250.30	21.85	8.80		12.52	217.27
May	192.55		5.70		9.63	177.22
Jne.	260.20	15.00	4.20		13.00	228.00
July	192.35	28.05	4.20		9.62	143.53
Aug.	260.45	17.50	4.20		13.02	225.50
Sept.	175.03	37.35	6.30		8.38	123.00
Oct.	311.95	24.45	6.30		15.60	258.50
Nov.	255.45		4.20		12.77	238.48
Dec.	220.10	11.25	6.30		11.00	190.55
<i>1934</i>						
Jan.	280.64	42.94	8.90	19.47	14.03	197.15
Feb.	229.40		8.55	8.75	11.47	200.63
Mch.	239.20	17.95	7.40		11.96	201.89
Apr.	296.70	31.30	6.70		14.84	243.86
<i>67</i>						
May	216.85	7.12	5.55		10.84	193.34
Jne.	211.25		8.50		9.81	192.94
July	258.65	27.85	3.60		12.93	214.27
Aug.	275.75	31.45	1.75		13.54	227.01
Sept.	226.75	5.00	5.25		11.29	204.21
Oct.	258.75	45.75	5.25		12.94	194.81
Nov.	249.50		1.75	13.67	12.48	221.60
Dec.	299.04				14.04	280.00
<i>1935</i>						
Jan.	253.08	40.40	1.75		12.65	179.99
Feb.	239.60		1.75	27.61	11.98	193.26
Mch.	285.00	29.65	8.50		14.25	232.70
Apr.	272.25	23.25	1.85		13.61	233.64

From May, 1935 to August 6, 1936 when the account was closed, the first set of ledger sheets numbered from 18 to 32 show the collection of rents by Mr. Mills for Joseph A. Berberich only as to premises 909 Euclid Street, Northwest, and 511 L Street, Northwest, and in connection with such properties during that period of time, they show collections of rents and disbursements as follows:

<u>RENTS COLLECTED</u>		<u>DISBURSEMENTS</u>				
		Repairs	Court Costs	Collector of Taxes, D. C., water rent	Agent's Commission	To Joseph A. Berberich
<i>1935</i>						
May	\$ 76.50	\$	\$	\$	\$ 3.83	\$ 72.67
June	76.50				3.83	72.67
July	76.50				3.83	72.67
Aug.	76.50				3.83	72.67
Sept.	78.25		1.75		3.91	72.59
Oct.	76.50				3.83	72.67
Nov.	78.25	9.00	1.75		3.95	63.59
Dec.	78.25		1.75		3.91	72.59
<i>1936</i>						
Jan.	97.49	3.55	1.75	27.31	4.88	60.00
Feb.	60.75	11.50	1.75		3.04	44.46
Mch.	89.75	10.35	3.25		4.33	71.82

68 From April 17, 1936 to August 6, 1936, the date of the last entry on the list of ledger sheets numbered 18 to 32, the entries showed receipt of rents from 511 L Street, Northwest in the total sum of \$244.75, court costs in connection with 909 Euclid Street, Northwest in the sum of \$1.50, and in connection with 511 L Street, Northwest, in the sum of \$1.75, repairs on 511 L Street, Northwest, in the sum of \$2.00, commission to Mr. Mills of \$9.11, a check to Mary C. Berberich in the amount of \$149.14. As of August 5, 1936 the following entry appears:

"L. J. Mills, Jr., court costs bill of interpleader
 Berberich v. Beaton Co., Supreme Ct.\$13.00
 M. Fee, Serving rule to show cause, Clerk's... 2.00
 Fee, filing rule and petition 1.00
 Court Fee \$5.00 M. Fee \$1.00 6.00"

As of August 6, 1936, the last two entries appear as follows:

"Com.\$ 3.13
 Ch. #15422 Am. & Tr.—Arthur J. Hilland,
 Atty., for the J. R. Beaton Co.—duplicate state-
 ment in rent folder sent 5/19/36—511 L St.
 N. W. under garnishment proceedings 56.12"

The second list of ledger sheets numbered 1 to 4 in the name "Miss Mary C. Berberich, 1801 Kenyon St., N. W." recorded the collection of rents from premises 1621 Third Street, Northwest, 1623 Third Street, Northwest, 1610 Reeves Court, Northwest, 1612 Reeves Court, Northwest, 1619 Third Street, Northwest, 643 L Street, Southwest, and 641 L Street, Southwest, from April 25, 1935, the date of the first entry, to August 5, 1936, the date of the last entry on the ledger sheets. During that period of time the ledger sheets showed the collection of rents from said premises and disbursements in connection therewith, as follows:

69

1935

Apr. 25 to

RENTS COLLECTED			DISBURSEMENTS				
		Repairs	Court Costs	Collector of Taxes, D. C., water rent	Agent's Com- mission	To Joseph A. Berberich	To Mary C. Berberich
June 1	\$203.00	\$ 2.00	\$ 3.50	\$	\$10.15		\$187.35
June	174.19	9.00	1.75		8.44		155.00
July	188.50		1.75		9.43		171.88
Aug.	188.75	4.75	1.50		9.44		183.06
Sept.	191.25	25.00			9.56		156.69
Oct.	187.41	12.35	1.75		8.31		160.00
Nov.	171.00	25.50	1.50		8.55		114.29
Dec.	165.75	8.00			8.25		149.46
1936							
Jan.	196.00	1.50	1.75	13.12	9.80	35.00	134.83
Feb.	132.83	29.55	1.75		6.53		95.00

From February 28, 1936 to May 12, 1936 the ledger sheets in the name of Mary C. Berberich numbered 1 to 4 show rent collections in the amount of \$192.65, rental agent's commission of \$8.33, water rent of \$20.79, repairs of \$7.50, disbursements to Mary C. Berberich of \$135.00, overdraft of \$26.05, and court costs in the amount of \$10.50 for landlord and tenant summonses on April 16, 1936 against the tenants of 1612 Reeves Court, Northwest, 1623 Third Street, Northwest, 1621 Third Street, Northwest, 643 L Street, Southwest, 641 L Street, Southwest, and 1619 Third Street, Northwest.

For the period from May 12, 1936 to July 30, 1936 the ledger sheets numbered 1 to 4 show rent collections in the amount of \$690.57 and disbursements as follows: Court

costs in the amount of \$10.25 for landlord and tenant summonses against the tenants of 1612 Reeves Court, Northwest, 1623 Third Street, Northwest, 1621 Third Street, Northwest, 641 L Street, Northwest; repairs, \$40.55; water rent, \$8.14; agent's commission, \$21.37; check to Arthur J. Hilland, Atty. for J. R. Beaton Company, as per order of Court, \$214.45 on August 6, 1936.

The ledger sheet numbered 4 shows the receipt of rents in the amount of \$67.00 on August 5, 1936 and disbursements as follows:

70 repairs, \$7.00; agent's commission, \$3.35; Mary C. Berberich, \$56.65. There were no further entries on the ledger sheets after August 6, 1936.

The witness produced and there were received in evidence 108 cancelled checks all drawn by the witness, Lawrence J. Mills. The oldest check was dated January 28, 1935. All the checks (19 in number) from that date to and including April 10, 1935 were made to the order of the defendant, Joseph A. Berberich, and endorsed by him. The 20th check was dated May 1, 1935. That and the remaining checks were dated, payable, in the amounts, and endorsed as follows:

<i>Date</i>	<i>Payee</i>	<i>Amount</i>	<i>Endorsements</i>
1935			
May 1	Mary C. Berberich	\$15.00	Mary C. Berberich
" 2	Mary C. Berberich	35.00	Mary C. Berberich
" 6	Jos. A. Berberich	20.00	Jos. A. Berberich
" 8	Mary C. Berberich	15.00	Mary C. Berberich and Jos. A. Berberich
" 13	Mary C. Berberich	40.00	Mary C. Berberich and Jos. A. Berberich

<i>Date</i>	<i>Payee</i>	<i>Amount</i>	<i>Endorsements</i>
May 16	Mary C. Berberich	25.00	Mary C. Berberich and Jos. A. Berberich
" 21	Joseph A. Berberich	52.67	Joseph A. Berberich
" 27	Mary C. Berberich	40.00	Mary C. Berberich and Joseph A. Berberich
Jne. 1	Mary C. Berberich	17.35	Mary C. Berberich and Jos. A. Berberich
" 11	Joseph A. Berberich or bearer	20.00	Charles Berberich
" 21	Joseph Berberich	52.67	Joseph Berberich
" 26	Mary C. Berberich	20.00	Mary C. Berberich
July 3	Mary C. Berberich	50.00	May Berberich
" 6	Mary C. Berberich	35.00	Mary C. Berberich
" 12	Joseph A. Berberich	20.00	Joseph A. Berberich
" 17	Mary C. Berberich or bearer	50.00	Jos. A. Berberich
" 22	Joseph A. Berberich	32.67	Joseph A. Berberich
" 22	Joseph A. Berberich	20.00	Joseph A. Berberich
" 27	Mary C. Berberich or bearer	15.00	May Berberich
" 29	Mary C. Berberich	21.88	Mary C. Berberich and Joseph A. Berberich
Aug. 2	Mary C. Berberich	45.00	Mary C. Berberich
" 6	Mary C. Berberich or bearer	25.00	Joseph A. Berberich
" 12	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 12	Joseph A. Berberich	15.00	Joseph A. Berberich
" 14	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
71			
" 21	Joseph A. Berberich	50.00	Joseph A. Berberich
" 24	Mary C. Berberich	15.00	Joseph A. Berberich
" 26	Mary C. Berberich or bearer	25.00	Joseph A. Berberich

<i>Date</i>	<i>Payee</i>	<i>Amount</i>	<i>Endorsements</i>
Aug. 27	Mary C. Berberich	13.06	Mary C. Berberich
" 27	Joseph A. Berberich	7.67	Joseph A. Berberich
Sept. 3	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 7	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 16	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 17	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 17	Joseph A. Berberich	25.00	Joseph A. Berberich
" 21	Mary C. Berberich or bearer	15.00	Walter F. Berberich
" 23	Joseph A. Berberich	47.59	Joseph A. Berberich
" 27	Mary C. Berberich or bearer	41.69	Joseph A. Berberich
Oct. 1	Mary C. Berberich or bearer	20.00	Joseph A. Berberich
" 4	Joseph A. Berberich	15.00	Joseph A. Berberich
" 4	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 7	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 12	Mary C. Berberich or bearer	5.00	Joseph A. Berberich
" 15	Mary C. Berberich or bearer	30.00	Joseph A. Berberich
" 15	Joseph A. Berberich	10.00	Joseph A. Berberich
" 17	Joseph A. Berberich	10.00	Joseph A. Berberich
" 19	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 22	Joseph A. Berberich	37.67	Joseph A. Berberich
" 24	Mary C. Berberich or bearer	5.00	Joseph A. Berberich

<i>Date</i>	<i>Payee</i>	<i>Amount</i>	<i>Endorsements</i>
Oct. 28	Mary C. Berberich or bearer	40.00	Joseph A. Berberich
Nov. 4	Mary C. Berberich or bearer	25.00	Joseph A. Berberich
" 7	Mary C. Berberich or bearer	5.00	Joseph A. Berberich
" 13	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 18	Joseph A. Berberich	15.00	Joseph A. Berberich
" 21	Joseph A. Berberich	48.59	Joseph A. Berberich
" 23	Mary C. Berberich or bearer	10.00	Joseph A. Berberich
" 25	Mary C. Berberich	20.00	Mary C. Berberich
" 25	Mary C. Berberich or bearer	5.00	Joseph A. Berberich
" 27	Mary C. Berberich or bearer	5.00	Joseph A. Berberich
" 27	Mary C. Berberich or bearer	9.29	Joseph A. Berberich
" 30	Mary C. Berberich or bearer	27.00	Joseph A. Berberich
72			
Dec. 3	Mary C. Berberich or bearer	40.00	Joseph A. Berberich
" 13	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 17	Mary C. Berberich or bearer	15.00	Joseph A. Berberich
" 17	Joseph A. Berberich	25.00	Joseph A. Berberich
" 21	Joseph A. Berberich	47.59	Joseph A. Berberich
" 28	Mary C. Berberich	32.46	Mary C. Berberich
" 31	Mary C. Berberich or bearer	25.00	Joseph A. Berberich

<i>Date</i> 1936	<i>Payee</i>	<i>Amount</i>	<i>Endorsements</i>
Jan. 6	Mary C. Berberich or bearer	50.00	Joseph A. Berberich
" 14	Joseph A. Berberich	35.00	Joseph A. Berberich
" 20	Mary C. Berberich or bearer	10.00	Joseph A. Berberich
" 20	Joseph A. Berberich	60.00	Joseph A. Berberich
" 21	Joseph A. Berberich	11.51	Joseph A. Berberich
" 25	Mary C. Berberich	20.00	Richard S. Berberich
" 31	Mary C. Berberich or bearer	29.83	Joseph A. Berberich
Feb. 4	Mary C. Berberich	15.00	Mary C. Berberich
" 12	Mary C. Berberich or bearer	35.00	Joseph A. Berberich
" 18	Mary C. Berberich or bearer	25.00	Joseph A. Berberich
" 20	Joseph A. Berberich	10.00	Joseph A. Berberich
" 21	Joseph A. Berberich	34.46	Joseph A. Berberich
" 25	Mary C. Berberich or bearer	20.00	Joseph A. Berberich
" 28	Mary C. Berberich or bearer	5.00	Joseph A. Berberich
Mch. 3	Mary C. Berberich or bearer	70.00	Joseph A. Berberich
" 12	Mary C. Berberich or bearer	60.00	Joseph A. Berberich
" 20	Joseph A. Berberich	25.00	Joseph A. Berberich
" 23	Joseph A. Berberich	46.82	Joseph A. Berberich
Aug. 5	Mary C. Berberich	149.14	Mary C. Berberich
" 5	Mary C. Berberich	56.65	Mary C. Berberich
" 6	Arthur J. Hilland, Atty. for J. R. Beaton Company	56.12	Arthur J. Hilland, Atty. for J. R. Beaton Company

73 The witness further testified that he usually handed the checks to Joseph A. Berberich personally; that Joseph A. Berberich authorized the repairs that were made.

On cross examination, the witness testified that in May, 1936 he filed a bill of interpleader in Equity cause No. 61456 entitled "Lawrence J. Mills, plaintiff vs. Joseph A. Berberich, *et al*, defendants", the proceedings in which will appear in the record, having been designated as a part of the record by the defendant's counter designation of record. The witness identified his signature to the original and amended bills of interpleader. He further testified that the proceedings had to be dismissed because the plea in abatement of J. R. Beaton Company was granted and service of process could not be had against the company. He further testified that the properties from which he collected rents were old and in pretty bad condition.

Thereupon, the plaintiff called Henry H. Carter, who being first duly sworn, testified in substance as follows: that he is a real estate broker and is here in response to a subpoena *duces tecum* to produce his records covering rents collected by him; that he collected the rents for Joseph A. Berberich's daughter, Mary C. Berberich; that the rent collections were turned over to him by Mr. Joseph A. Berberich; that Mr. Joseph A. Berberich told him about the matter and took it up with him; that the properties from which he collected rents were premises,

511 L Street, Northwest
1608 Reeves Court, Northwest
1610 Reeves Court, Northwest
1612 Reeves Court, Northwest
909 Euclid Street, Northwest

909 W Street, Northwest
 1619 Third Street, Northwest
 1621 Third Street, Northwest
 1623 Third Street, Northwest
 641 L Street, Southwest
 643 L Street, Southwest
 419 N Street, Northwest

74 that he started to collect the rents from said properties in 1937; that he had no dealings with Mary C. Berberich personally in regard to the property; that Joseph A. Berberich was in his office personally from time to time about the properties and other matters. The witness produced a group of 79 cancelled checks which he testified covered his remittances of rents collected from the property. The first check was dated November 18, 1937 and the last one was dated May 1, 1940. All the checks were signed by the witness as the maker and were made payable to Mary C. Berberich. The checks were dated, in the amounts and endorsed as follows:

<i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
11/18/37	\$ 12.48	Mary C. Berberich Joseph A. Berberich, E. F. Jarboe
12/ 2/37	14.73	Mary Berberich Harry Feldman E. T. Zeizler
12/ 8/37	24.47	Mary C. Berberich Harry Feldman
12/22/37	21.62	Mary C. Berberich Harry Feldman
9/21/38	104.92	Pay to the order of The Riggs National Bank Rose Duckett, Mary C. Berberich

<i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
12/23/38	33.97	Mary C. Berberich May Berberich Karl H. Noe
12/ 7/38	3.63	Mary C. Berberich one illegible endorsement A. B. Liquor Co.
12/15/38	39.07	Mary C. Berberich
2/21/38	81.18	Mary C. Berberich Vernon F. Duckett
11/15/38	40.85	Mary C. Berberich
12/31/38	51.30	Mary C. Berberich May Berberich
1/ 7/38	14.73	Mary C. Berberich Kenesaw Market Harry Feldman G. P. Iverson Co.
11/26/38	36.10	Mary C. Berberich
11/25/38	129.68	Mary C. Berberich
3/ 7/38	14.73	Mary C. Berberich Harry Feldman B. B. Earnshaw Co., Inc.
3/22/38	62.23	Mary C. Berberich Vernon F. Duckett
5/20/38	52.25	Mary Berberich Harry Feldman
75 <i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
5/ 3/38	\$ 36.34	Mary Berberich Harry Feldman
5/ 6/38	39.19	Mary C. Berberich Vernon F. Duckett
3/29/38	26.37	Mary C. Berberich
4/20/38	52.25	Mary C. Berberich Joseph A. Berberich Raymond R. Rupert

<i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
4/ 6/38	25.47	Mary C. Berberich Harry Feldman
10/10/38	53.20	Mary C. Berberich Harry Feldman
10/ 1/38	58.45	Mary C. Berberich
9/ 2/38	111.28	Mary C. Berberich
1/ 3/38	21.62	Mary C. Berberich Kenesaw Market Harry Feldman Harry Shapiro Company
1/24/38	21.62	Mary C. Berberich Harry Feldman
2/ 9/38	14.73	Mary Berberich Harry Feldman B. B. Earnshaw Co., Inc.
1/24/38	24.47	Mary C. Berberich Kenesaw Market Harry Feldman
2/23/38	21.62	Mary C. Berberich Harry Feldman B. B. Earnshaw Co., Inc.
12/19/38	61.75	Mary C. Berberich May Berberich
7/ 6/38	37.44	Mary C. Berberich Harry Feldman
1/20/39	117.33	Mary C. Berberich 2 illegible endorsements
1/28/39	85.03	Mary Berberich 2 illegible endorsements
12/15/39	96.14	Mary C. Berberich Pay to the order of The Riggs National Bank Rose Duckett
11/30/39	175.90	Rose Duckett

<i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
2/ 7/39	55.58	Rose Duckett
4/14/39	160.08	Rose Duckett
2/15/39	40.85	Mary C. Berberich
3/30/39	37.24	Mary C. Berberich
3/14/39	155.33	Mary C. Berberich
3/ 1/39	104.03	Mary C. Berberich
7/14/39	118.75	Mary C. Berberich
9/15/39	118.73	Mary C. Berberich
		Pay to the order of The Riggs National Bank
		Rose Duckett
6/30/39	99.75	Rose Duckett
8/28/39	155.33	Rose Duckett
8/15/39	94.53	Rose Duckett
7/31/39	155.33	Rose Duckett
5/31/39	85.03	Rose Duckett
6/14/39	49.32	Mary C. Berberich
		Rose Duckett
76 <i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
1/ 5/39	\$ 31.83	Mary C. Berberich
5/15/39	189.05	Mary C. Berberich
		Pay to the order of The Riggs National Bank
		Rose Duckett
5/ 2/39	29.80	Mary C. Berberich
9/29/39	145.35	Mary C. Berberich
11/15/39	46.08	Mary C. Berberich
		Pay to the order of The Riggs National Bank
		Rose Duckett
10/31/39	122.49	Rose Duckett
10/16/39	132.97	Rose Duckett
1/16/40	81.50	Rose Duckett
1/31/40	227.53	Rose Duckett
2/19/40	79.53	Rose Duckett

<i>Date</i>	<i>Amounts</i>	<i>Endorsements</i>
4/ 1/40	154.85	Rose Duckett
5/15/40	157.65	Rose Duckett
5/ 1/40	97.49	Rose Duckett
4/15/40	122.55	Mary C. Berberich
1/31/41	140.60	Mary C. Berberich
		Rose Duckett
3/17/41	117.38	Mary C. Berberich
2/17/41	61.75	Mary C. Berberich
		Pay to the order of The Riggs
		National Bank
		Rose Duckett
3/ 3/41	136.57	Rose Duckett
4/ 1/41	111.15	Rose Duckett
4/15/41	58.15	Rose Duckett
5/14/41	108.54	Rose Duckett
6/ 2/41	76.69	Rose Duckett
5/ 1/41	150.00	Mary Berberich
		Rose Duckett
5/28/41	100.00	Mary C. Berberich
		Rose Duckett
6/ 6/41	73.44	Mary C. Berberich
		Pay to the order of The Riggs
		National Bank
		Rose Duckett
7/ 1/41	169.77	Rose Duckett
7/21/41	94.23	Rose Duckett
7/31/41	74.75	Mary C. Berberich
		Rose Duckett
8/14/41	29.20	Mary C. Berberich
		Rose Duckett

The witness produced and there were offered in evidence rent statements in the name of Mary C. Berberich commencing as of January 4, 1938. The statements showed the following:

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Ruppert Account 643 L St.	Berberich- Rupert Note
1/4/38	\$ 60.00	\$	\$ 3.00	\$ 57.00	\$	\$
2/8/38	45.00		2.25	42.75		
2/21/38	87.25	1.75	4.32	81.18		
2/23/38	22.75		1.13	21.62		
3/7/38	15.50		.77	14.73		
3/22/38	65.50		3.27	62.23		
3/29/38	27.75		1.38	26.37		
4/6/38	28.50	1.75	1.28	25.47		
4/6/38	15.78		.78			
(incl. cash rec'd from J. Berberich \$28)						
4/20/38	55.00		2.75	52.25		
5/3/38	38.25		1.91	36.24		
5/6/38	43.00	1.75	2.06	39.19		
5/20/38	55.00		2.75	52.25		
6/2/38	22.75		1.13	21.62		

(cash to J. Berberich \$15.00)

Statement of	Items Collected	Court Costs	Commission	Check	M. F. Ruppert Account 643 L. St.	Berberich- Rupert Note
6/5/38	43.00	1.75	2.06		(to cash—39.19 without des- ignation of payee)	
6/22/38	55.00		2.75	(to M. Berberich \$2.25)		50.00
6/28/38	12.00		.60	(cash to Mary Berberich \$11.40)		
7/2/38	13.75		.68	13.75		
7/20/38	80.50		4.02	(cash, Mary Berberich \$26.48)		65
8/3/38	25.75		1.28	(cash to Mary C. Berberich \$24.47)		50.00
9/2/38	149.50	3.25	7.45	111.28 27.50		
9/21/38	186.75		9.33	104.92		72.50
10/1/38	116.00	1.75	5.80	58.45		50.00
10/10/38	56.00		2.80	53.20		
10/17/38	198.00		4.90	86.00	(repairs, \$7.10)	

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Ruppert Account 643 L St.	Berberich- Ruppert Note
10/31/38	143.50		7.17	86.33		50.00
11/8/38	66.25		3.31	62.94		
11/15/38	43.00		2.15	40.85		
11/25/38	136.50		6.82	129.68		
11/26/38	38.00		1.90	36.10		
12/7/38	57.50		2.87	3.63	(to insurance, furniture, 1801 Kenyon, \$1.00)	50.00
12/15/38	78.75		3.93	39.07	(repairs, \$35.75)	
12/19/38	65.00		3.25	61.75		
12/23/38	35.75		1.75	33.97		
12/27/38	70.50		3.56	33.97	(repairs, \$33.97)	
12/30/38	54.00		2.70	51.30		

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Ruppert Account 643 L St.	Berberich- Rupert Note
1939				85.03		
1/20	\$123.50	\$	\$ 6.17	\$117.33	\$	\$
1/28	89.50		4.47	28.37	(to rent paid M. C. B. by Thos. Suggs 623 3rd St. \$35.75 and by Alex Lyons, 1608 Reeves \$15.00)	
2/1	83.25		4.16			
3/1	109.50		5.47	104.03		
3/15	163.50		8.17	155.33		
3/30	145.25		7.26	37.24	(Suggs \$35.75 Lyons 15.00)	50.00
4/14	168.50		8.42	160.08		
5/2	115.00		5.75	29.50	(to cash, Mary C. Berberich \$20.70, water rent \$8.75)	50.00
5/31	89.50		4.47	85.02		
6/14	290.07		14.25	49.32	(check to Rose	50.00

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Ruppert Account 643 L. St.	Berberich- Rupert Note
					Duckett, \$75, rent paid by Alex Lyons to Mary C. Berberich \$30.00)	
6/30	105.00		5.25	99.75		
7/14	125.00		6.25	118.75		
7/31	163.50		8.17	155.33		
8/15	99.50		4.97	94.53		
8/28	163.50		8.17	155.33		
9/15	135.50		6.67	118.73		(in the statement of 9/15/39 there is an entry "9/6 to cash M. Berberich \$10." in which the "M" is written in bright blue ink over a partially erased "J" and the remaind- er of the entry is in black ink.)
9/29	153.00		7.65	145.35		

Statement of	Rents Collected	Court Costs	Commision	Check	M. F. Ruppert Account 643 L St.	Berberich- Rupert Note
10/16	145.75	1.60	7.28	132.97	(fire insurance 909 Euclid St. \$3.90)	
10/31	128.85		6.36	122.49		
11/15	48.50		2.42	46.08		
11/30	222.00		11.10	175.90	(cash to Rose Duckett \$20.00)	
12/15	102.25		5.11	96.14	(fire insurance 1801 Kenyon St. \$1.00)	
1940						
1/16	81.50		4.07	77.43		
1/31	239.50		11.97	227.53		
2/19	88.00		4.40	79.53	(to error 1/16/40 \$4.07)	
3/1	117.00	1.25	5.85	109.90		
3/15	74.25	1.25	3.65	69.35		
4/1	164.25	1.25	8.15	154.85		

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Rupert Account	Berberich- Rupert Note
1940						
4/15	\$156.75	\$ 2.50	\$ 7.83	\$122.55	(to Alex Lyons \$6.00 to Thos. Suggs \$17.87)	
4/30	106.50	3.75	5.26	97.49		
5/15	187.00	2.50	9.35	157.65	(to water rent \$17.50)	
6/3	112.25		5.61	6.64	(in the statement of 6/3/40 there is an entry "5/28 to check J Mary Berberich" The words "to check" are written over an erasure.)	
6/14	111.25	1.25	5.50	104.50		
7/1	142.50	2.50	6.93	108.07	(to cash Mary C. Berberich \$25.00)	

There were no statements produced by the
witness from 7/1/40 until 9/16/40.

Statement of	Rents Collected	Court Costs	Commission	Check	M. F. Ruppert Account	Berberich- Rupert Note
9/16	123.26	3.75	6.16	113.34		
9/30	133.75		6.62	127.13		
10/14	175.00		8.75	166.25		
10/31	180.74		9.03	171.71		
11/15	65.00	1.25	3.25	59.57	(repairs, \$.93)	
12/2	235.00		11.75	223.25		

There were no statements produced by the
witness after the statement of 12/2/40.

Thereupon, the plaintiff called Rose Duckett, who was waiting in the witness room as a witness for the defendants, and after being duly sworn, she testified in substance, as follows: That she is the daughter of the defendant, Joseph A. Berberich, and sister of the defendant, Mary C. Berberich Lindeneau, and niece of the defendant, May Berberich. All the above-mentioned checks made by Henry H. Carter to Mary C. Berberich were handed to the witness and she was asked to state whether or not the endorsements thereon "Mary C. Berberich" were in the handwriting of her sister, Mary C. Berberich, and the witness answered that all said endorsements were in her (the witness') handwriting; that her sister, Mary C. Berberich, left the United States in 1937 or 1938 and had been away from Washington since that time, and gave her (the wit-

ness) a power of attorney, but the witness did not
80 produce the power of attorney; that her sister, Mary

C. Berberich, had acquired tax deeds to all the properties described in paragraph 7 of the plaintiff's bill of complaint, and that Mr. Carter had been collecting the rents for her, and that all the rents had been deposited in The Riggs National Bank in an account in the name of Rose Duckett, subject to check by her brother, Walter Berberich, or the witness. She further testified that her sister used some of the rents with which to purchase the tax deeds and also borrowed some money for that purpose, but she did not remember when, how much, or from whom the money was borrowed. The witness produced and there were offered in evidence bank statements from The Riggs National Bank, the first of which was dated February 29, 1940, and the last of which was dated August 29, 1941, all of which showed at the top an account as follows: "Dr. Walter F. Berberich and/or Mrs. Rose Duckett, 1752 P St., N.W., Washington, D. C." The name of the

defendant, Mary C. Berberich Lindeneau, did not appear on any of the bank statements. The witness further testified that from the proceeds of the rent, her father's room and board bill of \$40.00 per month was paid to her aunt, the defendant, May Berberich, and also his spending money and bills for clothing, etc. of about \$15.00 per month. Also \$40.00 per month for my brother Dick's board.

The witness produced and there were received in evidence three sets of check stubs, the earliest entry in which was August 17, 1938, and the last, March 9, 1941. She testified that the check stubs related to the account in The Riggs National Bank in which the rents were deposited. The check stubs contained entries some of which definitely related to the defendant, Joseph A. Berberich, as follows:

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Check No.	3	8/17/38	Joseph A. Berberich		\$15.00
	8	8/25/38	Joseph A. Berberich		15.00
	15	9/ 1/38	Joseph A. Berberich		15.00
	26	9/ 7/38	Joseph A. Berberich	.....	15.00
	41	9/16/38	Joseph A. Berberich	.....	15.00
	47	9/22/38	Joseph A. Berberich	.....	15.00
	57	9/28/38	Vernon F. Duckett, bread, Pop's and Dick's allowance —chickens—Toomey's note —Libbey's pay	.....	40.58
	66	10/15	Joseph A. Berberich	.....	4.00
	70	11/19/38	Joseph A. Berberich, Cash	.	10.00
	72	11/28/38	Joseph A. Berberich	.....	25.00
	76	1/ 4/39	Joseph A. Berberich	.....	10.00
	84	3/20/39	Cash for Pop	.....	25.00
	85	3/24/39	Cash for Pop	.....	25.00
	87	3/29/39	Pop, cash	.....	20.00
	89	4/10/39	May Berberich, Pop's board		40.00

Check No.	90	4/17/39	Joseph A. Berberich	20.00
	91	4/24/39	Joseph A. Berberich	10.00
			Note: also check on April 21	10.00
	—	5/ 1/39	Joseph A. Berberich, cash..	25.00
	93	5/ 8/39	Joseph A. Berberich	20.00
	94	5/13/39	Joseph A. Berberich for May for rent	50.00
	96	5/22/39	Joseph A. Berberich	20.00
	97	5/24/39	Joseph A. Berberich	15.00
	99	5/26/39	May Berberich for room and board	40.00
	102	6/ 6/39	May Berberich	40.00
	104	6/15/39	Joseph Berberich	20.00
	111	7/ 6/39	May Berberich	35.00
	112	7/18/39	May Berberich	70.00
	115	8/ 8/39	May Berberich	65.00
	117	8/14/39	Joseph A. Berberich	20.00
	118	8/24/39	Joseph A. Berberich	20.00
	119	8/26/39	May Berberich	80.00
	121	8/31/39	Joseph A. Berberich	20.00
	2	9/11/39	Joseph A. Berberich	20.00
	3	9/15/39	Joseph A. Berberich	20.00
	4	9/22/39	Joseph A. Berberich	20.00
	5	9/26/39	Joseph A. Berberich	5.00
	6	9/26/39	May Berberich	80.00
	7	9/30/39	Joseph Berberich	20.00
	11	10/ 9/39	Joseph Berberich	20.00
	12	10/12/39	Joseph Berberich	20.00
	16	10/19/39	Joseph Berberich	20.00
	17	10/23/39	May Berberich	80.00
	18	10/27/39	Joseph Berberich	20.00
	19	11/ 1/39	Joseph Berberich	20.00
	23	11/ 8/39	Joseph Berberich	20.00
	25	11/13/39	Joseph Berberich	10.00

Check No.	26	11/16/39	Joseph Berberich	20.00
	27	11/21/39	May Berberich	40.00
	28	11/23/39	Joseph Berberich	7.00
	30	12/ 4	Joseph Berberich	1.25
	32	12/ 5/39	Joseph Berberich	20.00
	34	12/11/39	Joseph Berberich	20.00
	36	12/18/39	May Berberich	70.00
	42	12/27/39	Joseph Berberich	50.00
	46	1/16/40	Joseph Berberich	50.00
	47	1/26/40	May Berberich, room and board	40.00
	53	2/12/40	May Berberich	40.00
82	57	2/24/40	May Berberich, room and board	30.00
	58	3/ 8/40	May Berberich	30.00
	66	3/20/40	May Berberich	80.00
	74	4/13/40	May Berberich	50.00
	—	5/22/40	May Berberich	50.00
	98	6/ 6/40	May Berberich	30.00
	104	6/17/40	May Berberich	50.00
	108	7/ 2/40	May Berberich, room and board for June	30.00
	—	7/17/40	May Berberich	50.00
	116	7/25/40	May Berberich, room and board for balance in July ..	30.00
	4	8/21/40	May Berberich, for room and board for August	30.00
	9	8/31/40	Joseph Berberich	50.00
	13	9/10/40	May Berberich	40.00
	18	9/19/40	May Berberich, room and board	30.00
	20	10/ 7/40	May Berberich, ½ R. & B. for October	40.00

Check No. 22	10/17/40	May Berberich, for last part Oct. room and board	40.00
25	11/12/40	May Berberich, 1/2 Nov. R. & B.	40.00
35	12/ 5/40	May Berberich, rent for No- vember concl.	40.00
41	12/11/40	May Berberich, first 1/2 of R. & B. for Dec.	40.00
47	12/18/40	May Berberich, remainder for R. & B. for Dec.	40.00
52	1/ 3/41	May Berberich	30.00
		Lyons check	\$10.00
			30.00
58	1/23/41	May Berberich	\$40.00
		Final payment for R. & B. for Jan.	
88	3/24/41	May Berberich	20.00
94	4/ 5/41	May Berberich, R. & B. April	40.00
99	4/14/41	May Berberich, R. & B. April	40.00

From check stub No. 46 dated January 16, 1940 in the name of Joseph A. Berberich and in the amount of \$50.00 there were no further check stubs bearing the name Joseph A. Berberich until check stub No. 9 dated August 31, 1940 in the name of Joseph Berberich in the amount of \$50.00, and from the latter date until check stub No. 1 and dated March 8, 1941, there were no stubs in the name of Joseph A. Berberich, but during those periods, there were numerous check stubs to "cash". The bank statements of The Riggs National Bank, which were offered and received in evidence, as hereinbefore shown, were accompanied by the

cancelled checks mentioned in the statements and such checks were also offered and received in evidence. Check No. 96 dated May 31, 1940 to "cash" in the sum of \$10.00 was endorsed by "Joseph A. Berberich" and also bore the deposit endorsement of "Shannon & Luchs Co.",

83 by which firm Joseph A. Berberich was employed.

Check No. 105 dated May 17, 1940 payable to "Cash" in the sum of \$10.00 was endorsed in the same manner. Check No. — dated June 24, 1940 payable to "Cash" in the sum of \$15.00 bore the deposit endorsement of "Shannon & Luchs Co." The same was true of Check No. — dated June 13, 1940 to "Cash" in the sum of \$40.00. From March 28, 1940, the date of the oldest cancelled check to "Cash" received in evidence, the checks made payable to "cash" were numbered, dated, in the amounts and endorsed as follows:

<i>Number</i>	<i>Date</i>	<i>Amount</i>	<i>Endorsements</i>
	1940		
68	3/38	\$ 20.00	No endorsement
69	4/ 1	38.00	Credit account E. J. Neuland
73	4/11	50.00	No endorsement
—	4/13	5.00	No endorsement
75	4/15	20.00	W. J. Neuland
80	4/19/40	20.00	W. J. Neuland
81	4/23	25.00	W. J. Neuland
83	4/26	25.00	W. J. Neuland
			A. B. Burbaum
—	4/ 8	15.00	No endorsement
85	4/30	20.00	W. J. Neuland
88	5/ 2	20.00	W. J. Neuland
			A. B. Burbaum
89	5 / 8	45.00	No endorsement
94	5/28	125.00	No endorsement

<i>Number</i>	<i>Date</i>	<i>Amount</i>	<i>Endorsements</i>
96	5/31	10.00	Joseph A. Berberich Shannon & Luchs Co.
100	6/ 7	15.00	W. J. Neuland A. B. Burbaum
105	5/17	10.00	Joseph A. Berberich Shannon & Luchs Co.
—	6/24	15.00	Shannon & Luchs Co.
—	6/13	10.00	Shannon & Luchs Co.
—	7/ 5	10.00	W. J. Neuland
—	7/11/	10.00	Charles F. Ruppert
—	7/13	10.00	No endorsement
—	7/17	25.00	No endorsement
—	7/19	10.00	W. J. Neuland
—	7/26	20.00	No endorsement
109	7/ 2	10.00	W. J. Neuland
114	7/10	10.00	H. H. Carter
118	8/ 3	20.00	W. J. Neuland
1	8/ 9	25.00	Richard Berberich
5	8/21	10.00	Charles Turner
8	8/26	10.00	No endorsement
—	10/ 4	25.00	H. H. Carter
—	10/12	20.00	W. J. Neuland
21	10/17	20.00	W. J. Neuland
26	11/12	20.00	W. J. Neuland A. B. Burbaum
84			
—	11/18	20.00	W. J. Neuland
30	11/27	20.00	W. J. Neuland
38	12/ 5	10.00	W. H. Carter
	<i>1941</i>		
59	1/27	5.00	No endorsement
—	1/30	5.00	Rose Duckett
—	2/ 8	100.00	J. Wm. Berberich

<i>Number</i>	<i>Date</i>	<i>Amount</i>	<i>Endorsements</i>
79	3/11	2.00	No endorsement
81	3/11	2.00	Oxford Market
85	3/17	20.00	May Berberich
89	3/24	10.00	Illegible
90	3/27	25.00	No endorsement
—	3/31	30.00	No endorsement
—	3/13	3.00	Rose Duckett
—	4/11	5.00	No endorsement
95	4/ 7	20.00	Joseph A. Berberich
100	4/14	10.00	W. J. Neuland
102	4/22	20.00	No endorsement
103	4/22	25.00	No endorsement
104	4/22	10.00	No endorsement
1	4/24	10.00	No endorsement
5	5/ 3	20.00	H. H. Carter
12	5/27	20.00	H. H. Carter
12	5/27	10.00	W. Barron
13	5/28	5.00	No endorsement
—	5/13	5.00	No endorsement
—	6/ 2	20.00	May Berberich
—	6/16	20.00	No endorsement
—	6/19	25.00	H. H. Carter
31	7/29	15.00	No endorsement
30	7/24	10.00	No endorsement
—	7/21	20.00	W. J. Neuland
—	7/15	20.00	H. H. Carter
27	7/16	5.00	No endorsement
22	7/ 5	20.00	May Berberich
—	8/29	20.00	H. H. Carter
—	8/26	10.00	No endorsement
—	8/20	22.50	May Berberich
—	8/ 1	40.00	No endorsement

All the cancelled checks introduced in evidence were signed by "Rose Duckett" as the maker thereof, including one or two small checks to the order of the defendant, Mary Catherine Berberich Lindeneau. Other checks on the account showed disbursements for water rent, taxes and repairs on the properties described in paragraph 7 of the plaintiff's bill of complaint, and other checks showed disbursements for interest and taxes on the property at 1801 Kenyon Street, Northwest, the interest thereon being paid periodically by check on the account to the order of Shannon & Luchs Co. Other checks showed disbursements for tuition for J. William Berberich and Richard Berberich.

On cross examination Mrs. Duckett testified that all the rent checks received from H. H. Carter were deposited in the account in The Riggs National Bank; that either she or her brother, Dr. Walter Berberich, could sign checks, but she assumed the privilege more frequently than her brother; that all the rents were deposited in the account; that Joseph A. Berberich received \$15.00 per week; that her sister, Mary Catherine Berberich Lindeneau, made a loan from American Security & Trust Company. The witness produced a note dated January 8, 1940 in the amount of \$100.00, which she testified represented a renewal of the original note; that the money was loaned to Charles A. and Annie C. Ruppert; that they guaranteed payment of the loan; that the money was used to pay for tax certificates around \$2,000.00; that her sister, Mary Catherine Berberich Lindeneau, left the United States in 1937 or 1938; that she was out West first, then to Bolivia, the Philippine Islands, and is now in South America; that her sister, when in Washington, was employed by General McIntyre for \$2,000.00 per annum; that she contributed to the family

household expenses; that the witness did too; that she went to work when she was eighteen years old; that both she and her sister contributed to the household expenses; that her sister borrowed most of the money for the tax certificates and used some rents also to pay for them; that Mr. Carter commenced collecting rents in 1938; that her brothers, Charles, Dick and Walter, went to college and some of the rents were used for their tuition; that she took over the handling of the account in The Riggs National Bank about August 17, 1938.

Thereupon, the plaintiff called the defendant, Joseph A. Berberich, and after being duly sworn, he testified in substance that he is one of the defendants in the case; that he does not own any personal property, and that he
 86 does not own any real estate. He was asked when he conveyed his estate by curtesy in the properties described in paragraph 7 of the plaintiff's bill of complaint and answered that in the Spring of 1936 his son and son-in-law came to him and told him that he was through and that they were taking over the said properties. Counsel for plaintiff called to his attention the witness's statement under oath in paragraph 7 of his answer filed in this case, wherein he said "That the remainder interest in said property seized said property and the income therefrom and declared a permanent forfeiture against this defendant during the month of May, 1935, and has continued to demand and receive said income since that time," and the witness replied that all he knows is that his son and son-in-law came to him in the Spring of 1936 and told him that he was through and that they were taking over the property. Counsel for the plaintiff then called the witness's attention to his affidavit made April 8, 1936 and filed in the case entitled "J. R. Beaton Company, Inc., a corporation, plain-

tiff vs. Joseph A. Berberich, defendant, at law No. 83836" in the above-entitled court, and his statement therein "that he is the owner of an estate by the curtesy" in the properties described in paragraph 7 of plaintiff's complaint, and asked the witness whether that statement or the one in his answer or the one that he had just made was true, and he made the same answer; namely, that his son and son-in-law came to him in the Spring of 1936 and told him that he was through and they were taking over the property. He further testified that he acquired premises 1801 Kenyon Street, Northwest, about twenty-two years prior to October 10, 1932 when it was sold under the first deed of trust; that he had lived in the house at that address from the time he acquired the property; that he lived there at the time of the foreclosure; that his sister, the defendant,

May Berberich, and his daughter, the defendant,
 87 Mary Catherine Berberich Lindeneau, also lived there at that time; that they knew about his financial difficulties; that he continued to live at 1801 Kenyon Street, Northwest, after the foreclosure; that his daughter, Mary Catherine Berberich Lindeneau, continued to live at that address after the foreclosure and until a short time after her marriage in 1936; that his sister, May Berberich, continued to live at that address until after the death of her mother in 1935, when she bought and moved to a home at 1728 Lamont Street, Northwest; that the witness lived at 1801 Kenyon Street, Northwest, until 1939, when he moved to 1728 Lamont Street, Northwest, where he lived with his sister, May Berberich; that when his sister, May Berberich, moved from the Kenyon Street address in 1935, she conveyed the property without consideration to his daughter, Mary Catherine Berberich Lindeneau, and that title thereto is still in her name; that since he moved from the Kenyon Street address, that house has been rented; that he has

collected some of the rents for the account of his daughter, Mary Catherine Berberich Lindeneau.

Check stubs and cancelled checks covering the account in The Riggs National Bank introduced in evidence during the testimony of the witness, Rose Duckett, showed disbursements in connection with premises at 1801 Kenyon Street, Northwest, as follows:

Check No. 68	11/15/38	Washington Gas Light Company for 1801 Kenyon Street	\$ 14.27
71	11/28/38	Shannon & Luchs interest for 1801.....	247.50
98	5/26/39	Shannon & Luchs, interest on first trust due May 27, 1939.....	247.50
29	11/27/39	Shannon & Luchs, first trust interest 1801 Kenyon St., N. W.....	247.50
49	1/30/40	to repair roof 1801 Kenyon St.	18.00
91	5/14/40	Collector of Taxes, for 1801 taxes 1939 & 1/2 1940	371.56
93	5/27/40	Shannon & Luchs, interest on first trust, 1801 Kenyon St., N. W.	247.50
32	11/28/40	Shannon & Luchs Co., mortgage, taxes, etc. for 1801 Kenyon Street, N. W.	483.96
88	39 12/ 5/40	H. H. Carter, insurance on furniture 1801 Kenyon Street	1.00

Check No. 43 12/12/40 Samuel S. Streb,
plumbing for 1801 Ken-
yon 4.50

that after the foreclosure he did not pay any rent during the time he lived at 1801 Kenyon Street, Northwest; that he did not and he does not know who paid for taxes and repairs on the property, the payments on the trust, or water rent; that he was employed by the real estate firm of Shannon & Luchs, Inc. for some time as a salesman and earned a couple of thousand dollars in commissions; that he is not employed at the present time; that he has no income; that his board and room bill is paid from the rents collected by Mr. Carter; that his clothing and other bills are paid from the same source; that he receives about \$15.00 per month from that source for spending money; that his son, Richard, has been living with him at the home of his sister, May Berberich, and his board bill is also paid from the rents collected by Mr. Carter; that from April, 1936 when Mr. Shreve stopped collecting rents from the properties he managed, and August, 1936 when Mr. Mills stopped collecting money on properties managed by him, until 1938 when Mr. Carter commenced collecting the rents, he does not know who managed the property; that he did not collect all the rents; that he did personally call at some of the houses sometimes and collect the rents for his daughter's account and some of the tenants came to 1801 Kenyon Street, Northwest, and paid the rent to him personally for his daughter's account. He admitted his endorsements on the cancelled checks introduced during the testimony of the witnesses, Charles S. Shreve and Lawrence J. Mills; that at the time he, as executor of the estate of Robert Berberich, deceased, transferred the building association account to the name of his sister, May Berberich, he and his brother, Robert J. Berberich, were both in financial difficulties; that his broth-

er, Robert, and their firm, Robert Berberich & Sons,
 89 Inc., both went into bankruptcy; that his Mother
 died October 18, 1934; that upon her death, the es-
 tate of his father, Robert Berberich, deceased, of which he
 and his brother, Robert J. Berberich, were executors, was
 closed out by his uncle, Charles F. Ruppert. When the
 witness was asked why he and his brother did not perform
 their duties as executors, he answered that it was handled
 by Mr. Ruppert because he was older. The witness pro-
 duced and there was offered in evidence a statement pre-
 pared by Charles F. Ruppert on January 22, 1935 showing
 that at that time there was in the estate of Robert Berber-
 ich, deceased, the sum of \$15,968.97 distributable as fol-
 lows:

Robert J. Berberich....	\$3,193.79
Joseph A. Berberich...	3,193.79
Rose M. Berberich....	3,193.79
May Berberich	3,193.79
Annie C. Ruppert.....	3,193.79

The witness further testified that of the \$3,193.79 distrib-
 utable to him, the sum of \$2,498.00 was paid to his daugh-
 ter, Mary Catherine Berberich Lindeneau, for monies ad-
 vanced by her for the treatment of John William Berber-
 ich, who went to live in New Mexico because he was suf-
 fering from acute asthma, \$500.00 to his sister, May Ber-
 berich, for monies advanced by her in connection with a
 nervous break-down suffered by his son, Richard S. Ber-
 berich, and \$100.00 to William J. Walters for property re-
 pairs; that this money was distributed to them by Charles
 F. Ruppert and it did not come into the witness's hands;
 that he does not have any records showing the amounts ad-
 vanced by his daughter, Mary Catherine Berberich Linde-
 neau, or his sister, May Berberich, and does not remember
 when they were advanced; that he did not receive any kind

of a receipt or release from either his sister or daughter; that at the time premises 1801 Kenyon Street, Northwest, were sold, he had an undivided one-fifth interest in the estate of his father, Robert Berberich, deceased, and also had an estate by curtesy in the twelve pieces of
90 property described in paragraph 7 of the plaintiff's complaint; that the transfer of 1801 Kenyon Street, Northwest, by the defendant, May Berberich, to Mary Catherine Berberich Lindeneau, was without any consideration; that the property was conveyed to her by his sister because she was the oldest of his children, to provide a home for him and his children; that his children never filed any kind of a suit to enforce their alleged right to a forfeiture of his estate by curtesy in the properties described in paragraph 7 of the plaintiff's bill of complaint; that he never conveyed or released his estate by curtesy in said properties by deed or any instrument in writing; that he does not know what repairs were made to the said properties after the date he claims his estate by curtesy therein was forfeited.

On cross examination, the witness testified that his wife, Rose M. Berberich, died on December 24, 1918; that seven children had been born of their marriage and that he acquired an estate by curtesy in the properties described in paragraph 7 of the plaintiff's bill of complaint, but he lost his estate because he was unable to pay taxes and make repairs; that he suffered severe financial losses in 1931; that he did not go into bankruptcy, but his brother did and so did their firm, Robert Berberich & Sons, Inc., of which he had been the head; that he placed a trust with H. L. Rust Company on his home at 1801 Kenyon Street, Northwest, in 1930 to raise money for his business; that his sister, May Berberich, purchased the property at foreclosure for the amount of the trust and paid \$2,000.00 on account

thereof and executed a new deed of trust securing the balance of \$7,000.00.

91 Thereupon, counsel for the plaintiff announced to the Court that the plaintiff was ready to rest its case, but before doing so, counsel wanted to submit a list of the documentary proof that he had offered and the Court had received in evidence. Counsel for the plaintiff thereupon read a list of the documents which he had offered and the Court had received in evidence. Counsel for the defendants thereupon called the Court's attention to the fact that counsel for plaintiff had not included in his list of documents Equity Cause No. 61456 entitled "Lawrence J. Mills, plaintiff vs. Joseph A. Berberich, *et al*, defendants" and the tax deeds about which the witness, Rose Duckett, had testified. Counsel for the plaintiff thereupon stated that he had not offered the record in that case or the tax deeds in evidence. Thereupon, after argument, the Trial Judge stated that the Court had examined the tax deeds and the record in Equity Cause No. 61456 and the Court would consider them anyway, to which ruling counsel for the plaintiff objected on the grounds that the documents in question had not been offered in evidence by the plaintiff; that the statements made in the pleadings in the Equity Cause were not binding on the plaintiff and were not competent evidence, and the plaintiff's rights could not be prejudiced by anything stated in the pleadings filed by the other parties to the equity proceeding, and the plaintiff had never been served with process in that action.

The record in Equity Cause No. 61456 is included in the transcript of record, having been designated by the defendants in their counter-designation of record. The tax deeds in question, being five in number, are hereto appended and for identification have been marked Exhibits A, B, C, D and E.

Thereupon, the plaintiff rested and counsel for the defendants made a motion on behalf of the several defendants to dismiss the action, and after argument by counsel
92 for both sides, the Court granted the motion over the objection of counsel for the plaintiff on the grounds that the plaintiff's evidence made out a *prima facie* case; that the Court's ruling was based on evidence not offered by the plaintiff; that the evidence of the transactions between the defendants was replete with badges of fraud, which had been called to the attention of the Court; that the defendant, Joseph A. Berberich, could not be divested of his estate by curtesy in the twelve properties described in paragraph 7 of the plaintiff's complaint, except by deed or judicial decree and there had been no deed or judicial decree; that the evidence did not show waste on the part of the life tenant, the defendant, Joseph A. Berberich; that the tax deeds did not divest the life tenant, Joseph A. Berberich, of his estate by curtesy; that the tax deeds did not create in the remainderman, the defendant, Mary Catherine Berberich Lindeneau, any greater estate than she already had, and her acquisition of the tax deeds should be construed as nothing more than her method of paying the taxes; that if the tax deeds divested the life tenant of his estate by curtesy, they also divested the other remaindermen of their remainder interest; that the tax deeds had been acquired in part with rents received by the defendant, Mary Catherine Berberich Lindeneau, and objected thereto for other reasons which had appeared in the argument of counsel for the plaintiff in opposition to the motion to dismiss.

The foregoing contains the substance of all the evidence given and introduced, rulings made by the Court and ob-

jections made by the plaintiff on the hearing of the above-entitled action.

(S) ARTHUR J. HILLAND

ARTHUR J. HILLAND

(S) DEWITT S. HYDE

DEWITT S. HYDE

Shoreham Building,

Attorneys for Plaintiff.

Stipulated and mutually
agreed to this 20th
day of January, 1942

ARTHUR J. HILLAND,
Attorney for Plaintiff,
VINCENT L. TOOMEY,
Attorney for Defendants.

BRIEF AND APPENDIX FOR APPELLEES

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

April Term, 1942

No. 8132

J. R. BEATON COMPANY, INC., a Corporation,
Appellant

vs.

MAY BERBERICH, JOSEPH A. BERBERICH,
MARY CATHERINE LINDENEAU,
Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

VINCENT L. TOOMEY
Attorney for Appellees
1015 15th Street, N. W.
Washington, D. C.

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BRIEF FOR APPELLEES

Jurisdictional Statement

The appellees contest the full and complete jurisdiction of the District Court of the United States for the District of Columbia, as well as, the United States Court of Appeals for the District of Columbia, over the parties to this litigation and the subject matter thereof. And the appellees continue to urge the non-joinder of Rose M. Berberich, now Rose M. Duckett, John Wm. Berberich, Walter F. Berberich, Charles E. Berberich and William S. Berberich, as a fatal error in the successful prosecution of this action. The appellee, Mary Catherine Lindeneau, formerly Mary Catherine Berberich, then residing in the City of Bagniy,

Mountain Province, in the Philippine Islands, authorized her attorney, Vincent L. Toomey, to enter his appearance in her behalf, when she was informed by the said Vincent L. Toomey that no publication had taken place in the Washington Law Reporter, thus rendering totally void, the attempted service by publication against her. (Appellant's App. 31.) This is brought to the Court's attention, because of the words "fraud and fraudulent intent" being recklessly, indiscriminately and wantonly used and employed in appellant's brief. (Appellant's brief 8, 10, 11, 17, 19, 24, 25 and 26.)

The appellee, Mary Catherine Lindeneau, did not appear at the trial in the lower court, because she was then living in Bolivia, South America, her husband being a metallurgical engineer, and the expense of attending the trial would be far too great. (Appellant's App. 16.)

The Parties.

The appellee, Joseph A. Berberich, is the father of the appellee, Mary Catherine Berberich, married name, Mary Catherine Lindeneau, and the brother of the appellee, May Berberich. He is likewise the father of Rose M. Berberich, now Rose M. Duckett, John Wm. Berberich, Walter F. Berberich, Charles E. Berberich and William S. Berberich, the persons who were not, but should have been, named co-defendants in the lower court.

Statement of the Case.

The action seeks to contest the ownership of three classes of property, which for clarification and simplification, counsel is going to classify as follows: (1) CERTAIN MONIES AND CREDITS IN THE WASHINGTON PERMANENT BUILDING ASSOCIATION; (2) THE REAL ESTATE LOCATED AT 1801 KENYON STREET, N. W.; (3) THE RIGHT, OR LOSS, OF A CURTESY

ESTATE IN CERTAIN MISCELLANEOUS PROPERTIES.

(1) *Monies and Credits.* Robert Berberich, father of the appellee Joseph A. Berberich, died testate on December 8, 1918. Under the terms of the will of the said Robert Berberich, deceased, his widow, Magdalena Berberich, was to have a life estate in certain monies and credits, some of which were held in the Washington Permanent Building Association, and upon her death the same were to be divided equally between their five children: the appellee, Joseph A. Berberich, another son, Robert A. Berberich, his three daughters, Rose B. Ruppert, Annie F. Ruppert and May Berberich, one of the appellees.

Magdalena Berberich died on October 18, 1934. Her life estate therein having ceased, the monies and credits were divided February 1, 1935. At the time of the division the monies and credits amounted to about \$15,968.95, giving each of the five children the sum of \$3,193.79. That the appellee, Joseph A. Berberich, directed his brother-in-law, Charles F. Ruppert, to pay his share as follows: To Mary Catherine Lindeneau, appellee, the sum of \$2,498.00, as a refund for monies advanced by her in the treatment of John Wm. Berberich, son of the appellee, Joseph A. Berberich, who was residing in the State of New Mexico, because of a certain chronic and acute asthmatic condition; to May Berberich, appellee, \$500.00 as a refund for monies expended by the said May Berberich, appellee, upon Richard S. Berberich, also a son of the appellee, Joseph A. Berberich for treatment of a certain nervous disorder or breakdown; and the sum of \$100.00 to William J. Walters for certain property repairs. (Appellant's App. 85; Appellees' App. 4 and 5.)

(2) *The Real Estate 1801 Kenyon St., N. W.* This property was sold at public auction on October 10, 1932, by Harry L. Rust and George Calvert Bowie, trustees. The property, for twenty years prior to that time was owned

by the appellee, Joseph A. Berberich. At the time of the foreclosure auction sale the property was the home of the appellee, Joseph A. Berberich, his six children, his sister, May Berberich, the appellee, and his invalid mother, Magdalena Berberich, who was also the life tenant under the will of Robert Berberich, deceased. The property was sold on October 10, 1932 by Rust and Bowie, trustees, for \$9,000.00, to the appellee, May Berberich, the said May Berberich paying \$2,000.00 cash and placing thereon a trust for \$7,000.00, with Rust and Bowie, trustees. That the said May Berberich, appellee, continued to live at said address until after the death of her mother, which occurred October 18, 1934. In the early part of 1935 the said May Berberich, bought and moved to her new home at 1728 Lamont St., N. W. That upon leaving the said house, 1801 Kenyon St., N. W., the said May Berberich conveyed the same to Mary Catherine Lindeneau, without consideration. The \$2,000.00 which had been advanced by her to purchase the same had been contributed jointly by her two sisters, Annie F. Ruppert and Rose B. Ruppert and herself. The appellee, Joseph A. Berberich, continued to occupy said house with his children until 1939, when he moved to the home of May Berberich, appellee and his sister. The title to this property is still in the appellee, Mary Catherine Lindeneau. (Appellant's App. 82; Appellees' App. 8.)

(3) *The Right or Loss of a Curtesy Estate in Certain Real Estate.* The proceeding in the lower court sought to validate an estate by the curtesy in the appellee, Joseph A. Berberich, in the following real estate:

641-43 L Street, S. W.

1619-21-23 Third Street, N. W.

1610-12 Reeves Court, N. W.

909 W Street, N. W.

511 L Street, N. W.

411 N Street, N. W.,

also one-half interest in 909 Euclid Street, N. W.

Rose M. Berberich, wife of the appellee, Joseph A. Berberich, died intestate December 24, 1918, possessed of the above real estate in fee simple. She was survived by six children and their father, the said Joseph A. Berberich. In 1930 and 1931 the said Joseph A. Berberich suffered severe financial reverses, in the total loss of his shoe and mercantile business, conducted jointly with his brother, Robert A. Berberich, under the corporate name Robert Berberich Sons, Inc., a corporation. As a result of this loss of estate the said Joseph A. Berberich neglected to pay the taxes upon all the property in which he held a curtesy estate, as well as, to keep the same in proper repair. That as a result of thereof tax deeds were issued against these properties to Mary Catherine Berberich, now Lindeneau, in 1935-36 by the Commissioners of the District of Columbia. The property 909 Euclid Street, N. W., did not suffer this condition because the taxes were paid in full by John A. Schaffer, a co-owner. With these conditions attendant, the six children owning the remainder estate declared an abandonment and forfeiture against their father in 1935. On May 18, 1936, a Bill of Interpleader was filed against the said Joseph A. Berberich, his six children and the appellant, the J. R. Beaton Co., Inc., a non-resident corporation. Service of process against this corporation was had by serving Arthur J. Hilland, Esquire, then and now their attorney of record, and the same attorney who had procured the original judgment and had issued numerous garnishments thereon. The object of the interpleader was to determine the lawful payee for the rentals of said real estate, as between the adverse claims of Joseph A. Berberich, the six children of Joseph A. Berberich, claiming by virtue of the forfeiture, and the appellant, the J. R. Beaton Co., Inc., who was issuing numerous garnishments against the rental agents and tenants of said properties. A full answer was filed by the said children of Joseph A. Berberich,

claiming that a forfeiture had been declared by them against the said Joseph A. Berberich. A Plea in Abatement with an Affidavit in support thereof was filed by the present appellant, thus making an issue impossible and, therefore, no adjudication of the respective adverse claims. Thereupon the interpleader was dismissed and that cause ended. (Appellant's App. 31 *et seq.*; Appellees' App. 20 *et seq.*)

ARGUMENT.

Treating the three classes of property involved in this proceedings separately and independently and in accordance with the previous classification thereof, because of the different parties and circumstances connected therewith, the following is urged.

Class I.

That the funds on deposit in the Washington Permanent Building Association and other credits were divided and distributed on February 1, 1935. This proceeding was not filed until December 15, 1937, twenty-two and one-half months after the division and distribution.

The division and distribution of these credits was made because of the death of Magdalena Berberich, life tenant, which occurred October 18, 1934. The division and distribution was an executed and completed transaction when this proceeding was filed. No attempt was made in the trial of the case "to follow the money." In fact, the only disinterested witness offered by the appellant reflecting upon these monies and credits was Scott M. Birdson, an employee of the Washington Permanent Building Association, who merely identified the Building Association records. The use of these monies and credits was restricted to Magdalena Berberich, widow of Robert Berberich, until

her death on October 18, 1934, by virtue of the will of Robert Berberich. (Appellant's App. 41; Appellees' App. 13.)

The appellant called the appellee, Joseph A. Berberich, who willingly took the stand and stated that these monies and credits were included in a statement dated January 22, 1935, prepared by Charles F. Ruppert, his brother-in-law, and divided according to that statement on February 1, 1935. The share of Joseph A. Berberich was paid as follows, and heretofore explained: To Mary Catherine Lindeneau the sum of \$2,480.00 as refund for monies spent on John Wm. Berberich; \$500.00 to appellee, May Berberich, for monies advanced by her in treatment of another son; and the sum of \$100.00 to William J. Walters for property repairs. Not a dollar of this money was paid or reached the hands of this appellee. (Appellant's App. 85.) No attempt was made to show that this money was otherwise paid or otherwise received. No attempt was made to show that the other beneficiaries under the will of Robert Berberich, deceased, did not receive the same proportion and distributive division thereof.

The appellee, May Berberich, was in court, but appellant did not call her or any other person or persons to testify about these monies or credits.

The appellant rejected the seasonable opportunity to test this transaction in June, 1936, when it filed its Plea in Abatement to the Bill of Interpleader. It could have included these monies and credits in answer to the Bill of Interpleader, as all the parties were then before the Court. The transaction was naturally clear to everybody's mind and recollection on June 10, 1936, and did not suffer, as it now suffers, from the infectious condition of laches.

The greater part of the information concerning these monies and credits was an open public record in the Probate Court of the District of Columbia, available to the

appellant and his attorney since the death of Robert Berberich in 1918. Where is the evidence of fraud or fraudulent intent in this transaction?

Class II.

The property at 1801 Kenyon Street, N. W., is likewise void of any evidence showing fraud or fraudulent intent. The property had been foreclosed by Harry L. Rust and George Calvert Bowie, trustees, for default in the payment of the principal of an \$8,00.00 trust on same and two full years taxes. The property was bought at public auction by May Berberich, one of the appellees, on November 8, 1932, who paid Rust and Bowie, trustees, \$2,000.00 cash therefor and gave back a trust for \$7,000.00. Appellant did not obtain its judgment until April 23, 1934, over seventeen months after the foreclosure. (Appellees' App. 8, 10, and 15; Appellant's App. 32.)

That after the death of the appellees' mother, the said May Berberich conveyed this property to Mary Catherine Berberich, now Lindeneau, her niece, and one of the appellees hereto, without consideration. This was done with full approval of her two sisters, Annie F. Ruppert and Rose B. Ruppert, who had both contributed to the original deposit of \$2,000.00 used to buy the property. (Appellees' App. 11.)

That sum of \$2,000.00 contributed by the three aunts was the major circumstance which provided a home for six motherless children whose father was another victim of the financial ravishes of the "depression years" of 1930-33. A humane act is diagnosed a fraudulent act.

This property also could have been the subject of inquiry if the appellant had joined issue in the Bill of Interpleader, instead of filing a Plea in Abatement thereto. Again, where is the fraud or fraudulent intent?

Class III.

The third category of property is represented by the abandonment or forfeiture of a certain curtesy estate in the appellee, Joseph A. Berberich, in six parcels of property.

The appellee permitted and allowed the taxes on these properties, as he did on his home, to remain unpaid during the "depression years" of 1930-31-32-33, and the appellee, Mary Catherine Berberich, now Lindeneau, borrowed money through her uncle, Charles F. Ruppert, who guaranteed her loan at the American Security & Trust Company to pay these taxes, so as to protect her estate therein, as well as the estate of her sister and brothers. The payment of these taxes matured into the right to obtain tax deeds, which the appellee, Mary Catherine Lindeneau did exercise and received from the Commissioners of the District of Columbia. She did not have the weapon as efficacious as a deed of trust, which authorized the foreclosure of the property at 1801 Kenyon St., N. W. Her only weapon was to obtain the tax deeds and thus save the remainder estate for herself, her sister and her brothers.

The appellee, Joseph A. Berberich, because of his depleted financial condition was unable to keep the properties in repair, so as to further jeopardize the remainder estates therein. Obsolescence and dilapidation could have destroyed the improvements on this property with cyclonic fury, and deprived these children of those rentals to which they were lawfully entitled.

That during May of 1935 the children of Joseph A. Berberich seized these properties and informed the said Joseph A. Berberich that this curtesy estate in these properties had ended, due to his abandonment and forfeiture of that estate because of the non-payment of taxes and the improper maintenance of repairs. (Appellant's App. 81; Appellees' App. 32.)

The Bill of Interpleader was filed by Lawrence J. Mills, rental agent, in which he fully recited the adverse claims arising between Joseph A. Berberich, his six children and the J. R. Beaton Co., Inc. The Beaton Company had filed numerous garnishments against this rental agent, and those garnishments were issued at the request of Arthur J. Hilland, Esq., who procured the original judgment against the appellee, Joseph A. Berberich; who filed the Plea in Abatement to the suit for interpleader and who filed the suit to vacate these transfers and impress a trust in favor of his client, "due to the fraud and fraudulent intent of the parties hereto."

It is respectfully urged that the curtesy estate of Joseph A. Berberich, one of the appellees hereto, was abandoned and forfeited to his six children, and that by operation of law that estate was eliminated and automatically merged with the remainder estate. It was not a disclaimer of the curtesy by Joseph A. Berberich but an assertion of the superior right of the remainder estate to protect and preserve their interests in the property. To characterize this a disclaimer, it would be necessary to exonerate the life tenant from all the waste and neglect. A disclaimer, of course, is the act of the life tenant, while in this case the act of the remainder estate is asserting itself.

Most analogous to this situation, and more or less identical in facts, is the case of *O'Connell vs. Sewell*, 191 Arkansas 707, also 87 S. W. 2nd 985 (1935).

That case involved the payment of valuable oil royalties received from the Gulf Refining Company, and it became necessary for the court to determine whether the father's estate (original owner of the curtesy) had been surrendered or abandoned in favor of a daughter, Parthenia, so as to pay the royalties from that curtesy estate to the heirs and next of kin of the father, or the daughter. It definitely decided that by operation of law the curtesy had been sur-

rendered to his daughter and the royalties were payable to her heirs and next of kin. So, reading from page 712 we find the following:

“Appellant first contends that appellee acquired no curtesy interest in the 160 acre tract because at the time Parthenia, his wife, died her father, Ab Berry, has a life estate or curtesy interest therein. Appellee contends that prior to her death, the life estate or curtesy interest of Ab Berry had been surrendered by him to Parthenia and had merged in her reversionary estate, and that at the time she was the owner of the fee simple title thereto. The Court found for appellee on this point and correctly so. Ab Berry had allowed his daughter Parthenia, with her husband, to move on the 160 acre tract, *making valuable improvements thereon, and pay the taxes without attorning to him.* He treated them as the owners of the property from the day they moved on it, *and by his acts and conduct surrendered his curtesy interest therein to his daughter, Parthenia. Under the facts, his interest by curtesy passed to Parthenia by operation of law, although there was no proof of an express surrender, abandonment, or gift by him to her.* Parthenia was therefore after acquiring the life estate of Ab Berry, seized of an estate of inheritance in the 160 acre tract, and her husband, appellee, upon her death was entitled to an estate therein by the curtesy.”

Of course, behind this whole condition of the validity or invalidity of the curtesy estate is the fatal defect that the appellant in this case made only one of the six children defendants, when it seeks to adjudicate the curtesy estate. Certainly, to adjudicate the curtesy estate in this proceeding would take from these five children a right which they now enjoy and exercise and for which they are not in court.

Appellant had the very complete opportunity of contesting this curtesy estate in competition with the claims of these children when the Bill of Interpleader was filed, but it evaded the issue. That Bill of Interpleader made the appellant conversant with the fact that the children claimed the entire estate, and therefore a forfeiture against their

father, yet with this information known to it and its attorney from May 15, 1936, when the Interpleader was filed, it files this proceeding on December 15, 1937 without making five of the children parties thereto.

Serious statements and accusations are made in the original bill filed in this case, the conduct of the testimony and the purport and language of appellant's brief. Certainly, if fraud had been the object of any of the appellees to this case, they certainly would not have filed answers both in the interpleader and in this cause, containing such candid and explicit statements. No attempt is made by the appellant to explain why it didn't answer the interpleader, either in its brief in this Court or its presentation of its case in the lower court. This condition is extremely significant because of the accusations of fraud.

Each one of the three propositions involved in this case is susceptible of an honest conclusion. The case is even without suspicions much less malignant facts which would go to discredit the appellee's actions in the case, particularly the appellee, Joseph A. Berberich. This court in the case of *McDaniel v. Parish*, 4 Apps. D. C. 213, has delineated the circumstances necessary to prove fraud. Speaking from page 216 in the case of *McDaniel vs. Parish*, this court employed the following language:

"The gravamen of the case is the alleged fraud and collusion of the defendants, in respect to the purchase and conveyance of the property in question. To overcome the effect of the deeds—the one from Gist to McGowan and the other from McGowan to Emily E. Parish—the onus of proof is, of course, upon the plaintiffs. Fraud is not to be presumed, nor can it be established except upon clear proof. It may, however, be established as well by circumstantial as by direct evidence. But if the form and design of the transaction assailed may be traced to an honest and legitimate source equally as to a corrupt and fraudulent one, the former should in all cases be preferred. Suspicious circumstances are not the equivalents of proof; and unless all

the facts and circumstances of the case, when taken together, are strong enough to generate a clear rational conviction of the existence of the fraud charged, that conclusion ought not to be adopted which will destroy a *prima facie* good title to property, and blacken the characters of the parties concerned."

The only persons who testified in this case were: Scott M. Birdsong, employee of the Washington Permanent Building Association; Charles S. Shreve, Lawrence J. Mills, Henry H. Carter, rental agents; Rose Duckett; while the appellee, Joseph A. Berberich, was apparently called for the purpose of discovery. Of course, all of the above witnesses were called by the appellant. If fraud had actually existed in this case the same was susceptible of proof by documentary evidence, and no such evidence was forthcoming.

The two criticisms of the attorney for the appellant that the trial justice had examined the tax deeds and the record in Equity Cause No. 61,456, being the Bill of Interpleader, are not assigned as errors. The trial justice in this case sat as a chancellor. The knowledge of the tax deeds was elicited from the witness Rose Duckett, who was asked by counsel for appellant if she had such deeds with her. To this interrogatory she replied in the affirmative and counsel for appellant then asked her to produce the deeds, which she did. After the deeds were produced the witness was interrogated about them and it was then that the trial justice examined the tax deeds. (Appellant's App. 87.)

The records in the Bill of Interpleader, being Equity No. 61,456 of the District Court of the United States for the District of Columbia, were records of the same court which was hearing this cause. It is submitted that it is fundamental that the court can always review its own records, especially when the same offer any relevancy or value to the subject matter of the litigation. (Appellant's App. 58.)

CONCLUSION.

It is respectfully submitted to the Court that any charge of fraud must be completely expelled from consideration because of appellant's failure to answer the Bill of Interpleader or to explain to this Court, as well as the lower court, the reason why it did not answer such interpleader. In fact, this attitude by the appellant appears to cast a most dubious criticism upon the conduct of the appellant. The failure to bring before the court five out of six of the children indispensable parties to these proceedings, is likewise without explanation to this Court, or the court below. These two failures on the part of the appellant certainly must disqualify it from a successful conclusion in its behalf before this Court.

Respectfully submitted,

VINCENT L. TOOMEY,
Attorney for Appellees.

APPENDIX.
Case No. 8132.

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APPENDIX.

21 IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA.
HOLDING AN EQUITY COURT.

J. R. BEATON COMPANY, INC.,
a corporation,
411 Fifth Avenue,
New York City,

Plaintiff,

vs.

MAY BERBERICH,
1728 Lamont Street, N. W.

JOSEPH A. BERBERICH,
1801 Kenyon Street, N. W.

MARY CATHERINE BERBERICH,
1801 Kenyon Street, N. W.

Defendants.

Equity No. 66129.

Filed Jan. 22, 1938.

Answer of the Defendant Joseph A. Berberich.

The answer of the defendant, Joseph A. Berberich, to the original bill of complaint, respectfully shows:

1. Answering paragraph (1) this defendant can neither deny nor admit the allegations contained therein, and he demands strict and accurate proof thereof.

2. This defendant admits the allegations contained in paragraph (2) so far as they relate to his citizenship and residence, but can neither admit nor deny the remaining allegation thereof.

3. Answering so much of paragraph (3) as relates to him this defendant denies that the co-defendants, May Berberich and Mary Catherine Berberich, now Mary Catherine Lindenau (married), his sister and daughter respec-

tively, have in their names or hold possession or control of any property belonging to him as is more fully detailed hereinafter.

4. In answer to paragraph (4) this defendant can neither admit nor deny the allegations contained therein, but
22 he demands strict and accurate proof of the same.

5. Answering paragraph (5) this defendant denies most emphatically that he has any interest, equitable or legal, in any real estate in the District of Columbia or elsewhere, and that the title to the same is held in the name of his daughter, Mary Catherine Lindenau, or any other person or persons.

6. Answering paragraph (6) this defendant avers the facts to be that during the years 1929-30-31 and '32 he suffered severe and irreparable financial losses, taking from him his entire estate, both real and personal, and that among his assets so lost was his home located at No. 1801 Kenyon Street, N. W. That during the aforesaid period of time his said home was subject to a loan of \$8,000.00 to Harry L. Rust and George Calvert Bowie, Trustees, dated March 15, 1930, and recorded in Liber 6428 at folio 225 of the land records of the District of Columbia. That this defendant being unable to pay the interest and taxes upon the said deed of trust as provided under the terms and conditions thereof, was compelled to suffer foreclosure of the same at the order of the aforementioned trustees, Rust and Bowie, on October 10, 1932. That on the aforesaid date, to wit: October 10, 1932, the said trustees sold at public auction said real estate to his sister, May Berberich, a co-defendant herein, for the sum of \$9,000.00. That the said May Berberich with her very aged and ill mother, had since the death of defendant's wife, resided and made her home upon said premises, in common with defendant and his six children. That the said May Berberich paid the

sum of \$9,000.00 for said property by giving back a deed of trust for \$7,000.00 and cash of \$2,000.00. That said sum of \$2,000. was contributed jointly by the said May Berberich and her two sisters, Annie F. Ruppert and Rose B. Ruppert.

That no portion of said money was contributed or belonged to this defendant. That he was totally without funds or any estate whatsoever. That the said Mary Berberich continued to own said real estate as long as her mother lived, and after her mother's death she moved from said premises and deeded said real estate to her niece, Mary Catherine Berberich (now Lindenau) as a home for said niece and her sister and brothers, this being done with the approval of her two sisters, Anna May Ruppert and Rose B. Ruppert, who had contributed moneys in the purchase of said premises.

Further answering said paragraph this defendant avers that said foreclosure sale was entirely beyond his control and was not made with an intent to conceal and disguise his ownership therein. That since the time of said foreclosure he has never had any ownership in said real estate, although he has lived there because he had no other place to go and live with his six children. That the sum of \$9,000.00 was just sufficient to pay interest, taxes and foreclosure charges upon the same. That he files herewith a copy of the statement of sale by the foreclosing trustees marked Defendant's (Berberich) Exhibit A, and prays that the same be read as a part hereof.

7. In answer to paragraphs (7) and (8) this defendant avers, that he did become entitled to an estate by the curtesy in the real estate described therein upon the death of his wife, Rose B. Berberich. That because of his financial condition he was totally unable to maintain the taxes and general upkeep of said property, and, as a result thereof, he suffered a complete forfeiture of his estate therein. That tax deeds upon said property were issued by the Commis-

sioners of the District of Columbia against all of said property, except as to Lot 11, also known as Lot 835 in Square 2884, the taxes for which were paid by his co-owner, John A. Schaefer, who also claims a forfeiture against defendant's life estate for such nonpayment. That this defendant was unable to pay the taxes upon said real estate for many years preceding 1935, because the rents from
 24 the same were insufficient to support his children and pay the taxes thereon. That said real estate also suffered serious obsolescence and waste, which he was unable to guard against because of lack of funds and moneys. That the remainder interests in said property seized said property and the income therefrom and declared a permanent forfeiture against this defendant during the month of May, 1935, and has continued to demand and receive said income since that time. That he has done nothing to conceal any estate in said real estate, because he was divested of any interest therein by his failure and inability to keep and maintain the obligations attaching to said real estate and profits thereof.

8. In answer to paragraphs (9) and (10) this defendant admits that his father, Robert Berberich, died on November 15, 1918, leaving a last will and testament in which he bequeathed and devised his entire estate, personal and real, unto his widow, Magdalena Berberich, for and during the period of her natural life, and that the said Magdalena Berberich, defendant's mother, died on October 18, 1934. Defendant avers, however, that at the time of his father's death he was heavily indebted to him, as reference to said will will disclose. That at the time of his father's death this defendant personally owed his father the sum of Five Thousand Dollars (\$5,000.00) as well as owing him the sum of Eight Thousand Dollars (\$8,000.00) jointly with his brother, Robert J. Berberich, both of which debts were given to the debtors explicitly under the terms of the will of the

said Robert Berberich. That, in addition thereto, this defendant and his brother had been devised premises No. 1122 7th Street, N. W., which this defendant and his brother subsequently sold. That prior to their father's death this defendant and his brother were given premises No. 1116 to 1120 7th Street, N. W., by their father, which they encumbered in the sum of \$25,000.00. That the proceeds of the sale of 1122 7th Street, N. W., and the proceeds of
 25 the loan on 1116 to 1120 7th Street, N. W., they placed in their shoe and clothing business which was subsequently forced into bankruptcy. That all the moneys from the above sale and encumbrance were lost, together with other large amounts representing the entire personal estate of his brother, Robert J. Berberich, and himself. That the moneys on deposit in the Washington Permanent Building Association belonging to his father's estate amounting to about \$9,221.00 were divided on February 1, 1935, between Rose B. Ruppert, Annie F. Ruppert, May Berberich, sisters of defendant, and Robert J. Berberich, brother of defendant. That defendant's interest in said division was paid as follows: \$500.00 to May Berberich to refund her for moneys spent on Richard Schaefer Berberich, a minor, and a son of defendant, in an effort to overcome a general nervous breakdown suffered by the minor; \$100.00 to defendant's uncle, William J. Walter, for repairs to the real estate referred to in Paragraph Seven of this answer, and \$2,498.30 paid to Mary Catherine Berberich for moneys advanced by her from her personal earnings for the support, maintenance and education of her younger brother, John William Berberich, who was a victim of acute asthma and was compelled to remove and live in New Mexico because of the chronic condition.

Further answering said paragraphs (9) and (10) this defendant avers that the above represented all and any moneys, or property, real or personal, which he received or to which he was entitled under the estates of his father,

Robert Berberich, or mother, Magdalena Berberich, and that he, therefore, denies that he is concealing or causing the co-defendants, May Berberich and Mary Catherine Lindenau, to conceal any property with the intent to defraud his lawful creditors or in anywise hinder them in reaching said property.

26 Defendant further denies that the transfer to his mother of the moneys on deposit in the Washington Permanent Building Association made by him and his co-executor, Robert J. Berberich, on December 15, 1931, was made with any fraudulent intent, but was made in accordance with the provisions of his father's will. That his mother who was entitled to the use of said money in the building association was a chronic invalid for five years before she died in 1934. That in order to facilitate the use of said moneys his said mother executed a power of attorney to her daughter, May Berberich, the co-defendant in this case. That the said May Berberich was compelled to use much of said money in the medical care and domestic expenses of his mother because of her physical condition, and said money was not transferred by his mother to the said May Berberich in order to conceal or disguise any right that this defendant had in said fund. And this defendant denies that said May Berberich held said building association moneys in order to conceal this defendant's interest therein, or that Mary Catherine Berberich received said money with the intent to conceal this defendant's interest in said moneys or any other property.

9. Answering paragraph (11) this defendant stands ready to explain, detail and present all and any information concerning the transactions referred to in the original bill of complaint, and tender all documentary evidence in support thereof.

10. Further answering said bill of complaint this defendant denies that he has at any time made any transfer

with the intent and purpose of defrauding the plaintiff herein or any other creditor, but that through serious and severe financial losses he has lost his entire estate, real, personal and mixed.

WHEREFORE, having fully answered said bill of complaint this defendant prays that he be dismissed
27 hence with his reasonable costs.

JOSEPH A. BERBERICH.

City of Washington, }
District of Columbia. } ss.:

Personally appeared JOSEPH A. BERBERICH, who being first duly sworn does depose and say he has read the foregoing answer by him subscribed; that the matters and facts therein stated of his personal knowledge are true, and those stated upon information and belief he believes to be true.

JOSEPH A. BERBERICH.

Subscribed and sworn to before me this 21st day of January, A. D. 1938.

JOHN H. DAVIDSON,
Notary Public, D. C.

TOOMEY & TOOMEY,
Attorneys for Defendant.
By VINCENT L. TOOMEY,
1015 15th St., N. W.

DEFENDANT BERBERICH NO. 1 EXHIBIT A.

(Filed Jan. 22, 1938.)

28

H. L. RUST COMPANY
 REAL ESTATE LOANS AND INSURANCE
 1001 Fifteenth Street
 Washington, D. C.

November 8, 1932

*Messrs. Harry L. Rust and Geo. Calvert Bowie, Trustees**In account with H. L. Rust Company**Statement in re foreclosure on October 10, 1932, under a**First Deed of Trust, secured on Lot 50, Square**2599 (1801 Kenyon Street, N. W.)*

<i>By</i>	Sale of Lot Lot 50, Square 2599 (1801 Kenyon St., N. W.)	\$9,000.00
	Unearned premium on \$9,000. fire insurance cancelled November 4, 1932.....	2.39
<i>To</i>	Payment of principal first deed of trust loan	\$8,000.00
	Semi-annual interest on same due 9/15/32	240.00
	Interest on \$8,000. from 9/15/32 to 11/4/32 @ 6%.....	66.67
	Interest on interest from 9/15 to 11/4/32 @ 6%	1.95
	Taxes—1st ½ 1932 general taxes \$131.24, plus 14% penalty, \$18.37; 2nd ½ 1932 general taxes \$131.24, plus 8% penalty, \$10.50; 1st ½ 1933 general taxes \$131.24 plus 2% penalty, \$2.62; Sale, 1/19/32, for 2nd ½ 1931 general taxes \$131.24, penalty \$13.12, advertising 50¢; interest from 1/19/32 at 8%, \$9.20	579.27
	Thos. J. Owen & Son Advertising \$70.50; Auctioneer's Fee \$15.00	85.50

Revenue stamps on deed	9.00	
Amount charged by Trustees in lieu of commission provided for in deed of trust	20.00	
GPP/m	\$9,002.39	\$9,002.39

Answer of the Defendant May Berberich.

14

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
HOLDING AN EQUITY COURT

J. R. BEATON COMPANY, INC.,
a corporation,
411 Fifth Avenue,
New York City,

Plaintiff,

vs.

MAY BERBERICH,
1728 Lamont Street, N. W.;
JOSEPH A. BERBERICH,
1801 Kenyon Street, N. W.;
MARY CATHERINE BERBERICH,
1801 Kenyon Street, N. W.;
Defendants.

Equity No. 66129

(Filed January 22, 1938)

The answer of the defendant, May Berberich, to the original bill of complaint, respectfully shows:

1. In answer to paragraphs (1) and (2) this defendant avers that the allegations therein contained do not relate to her, and for that reason she does not answer the same.

2. Answering paragraph (3) this defendant admits that she is a citizen of the United States and a resident of the District of Columbia, and a sister of the co-defendant,

Joseph A. Berberich, and an aunt of Mary Catherine Berberich (now married), whose married name is Mary Catherine Lindenau. This defendant, however, most emphatically denies that she has in her possession, control or name any property, real or personal, belonging to the co-defendant, Joseph A. Berberich, or in which the said co-defendant has any right or interest, legal or equitable; and she knows of no property held by her niece, Mary Catherine Lindenau, co-defendant herein, which belongs to the co-defendant,

Joseph A. Berberich, which she will more fully detail
15 hereafter.

3. In answer to paragraph (4) this defendant avers that the allegations contained therein do not relate to her, and it is not necessary, therefore, that the same be answered by her.

4. Answering paragraph (5) this defendant avers that the allegations contained therein do not relate to her, but that she does not know of any property of any nature whatsoever, now or ever held by Mary Catherine Lindenau, daughter of the co-defendant, Joseph A. Berberich, for the benefit of the said Joseph A. Berberich; and that she is making this allegation because of the numerous and unfounded allegations of the plaintiff in this cause that this defendant was a party to fraudulent transfers with the said Mary Catherine Lindenau for the benefit of the defendant, Joseph A. Berberich.

5. In answer to paragraph (6) of the original bill of complaint so far as the same relates to her this defendant admits that on October 10, 1932, she purchased at public auction from the trustees, Rust and Bowie, premises No. 1801 Kenyon Street, N. W., for which she agreed and did give the sum of \$9,000.00, payable \$2,000.00 in cash and a loan of \$7,000.00 secured by the premises sold and purchased. That the said premises 1801 Kenyon Street, N. W., was her home, as well as the home of her invalid mother,

Magdalena Berberich, the defendant, Joseph A. Berberich, and his children. That the said sum of \$2,000.00 paid by her in the purchase of said premises was her money and the joint contribution of her two sisters, Annie F. Ruppert and Rose B. Ruppert; and not One Dollar of said purchase money belonged to the co-defendant, Joseph A. Berberich. That there is attached hereto a statement of sale by the trustees Rust and Bowie, to this defendant marked defendant's (Berberich) No. 2 Exhibit No. 1. That this de-

16 fendant continued to occupy said premises until her mother died. That after her mother's death she moved from said premises and conveyed said real estate to her niece, Mary Catherine Lindenau, as a home for her said niece and her sisters and brothers, this being done with the full approval of her two sisters, Annie F. Ruppert and Rose B. Ruppert, who had contributed moneys with this defendant to make possible the purchase of said premises.

Further answering said paragraph and the allegations thereof, this defendant most emphatically denies that the purchase of said real estate by her was to conceal the ownership of the defendant, Joseph A. Berberich; and she further denies that the transfer by her to her niece, Mary Catherine Lindenau, was to conceal the ownership of Joseph A. Berberich. That she also denies that either transaction was to hinder or defraud any of the creditors of Joseph A. Berberich from reaching or obtaining any property or estate in which the said Joseph A. Berberich, co-defendant herein, had any interest or right.

This defendant admits that the defendant, Joseph A. Berberich, was very heavily indebted when this defendant purchased premises No. 1801 Kenyon Street, N. W., as her purchase was made necessary to provide a home for her invalid mother and herself because the defendant, Joseph A. Berberich, was totally unable to pay the interest and taxes overdue upon said property. That the said defend-

ant, Joseph A. Berberich, had suffered a loss of his entire estate, real and personal, because of the bankruptcy of his shoe and clothing business.

6. Answering paragraphs (7) and (8) this defendant avers that the same in no wise relate to her, and it is not necessary for her to answer the same.

7. In answer to paragraphs (9) and (10) this defendant admits that her father, Robert Berberich, died on November 15, 1918, leaving a will in which Robert J. Berberich and Joseph A. Berberich were named as executors, 17 and that said will disposed of both real and personal property, giving unto the widow, Magdalena Berberich, a life estate in all property, real and personal. That under the terms and conditions of said will the said defendant, Joseph A. Berberich, was given a debt of \$5,000.-00 which he already owed the testator, Robert Berberich, and also given a debt jointly with his brother, Robert J. Berberich, a debt of \$8,000.00, which was jointly owed by the said Joseph A. Berberich and his brother, Robert J. Berberich, to the testator, Robert Berberich. That prior to the death of the said Robert Berberich, the said Robert Berberich had given the said Joseph A. Berberich premises No. 1116 to 1120 7th Street, N. W., and that under the said will had given to the same persons premises No. 1122 7th Street, N. W. That on October 18, 1934, the said Magdalena Berberich, widow of Robert Berberich, departed this life, and that prior to her death the said Magdalena Berberich had joined in a deed with Joseph A. Berberich and Robert J. Berberich in order to allow them to sell premises No. 1122 7th Street, N. W., as they desired money from said sale to use in their business.

This defendant admits that on or about December 14, 1931, the moneys then on deposit in the Washington Permanent Building Association were transferred by Robert J. Berberich and Joseph A. Berberich, executors under the

will of Robert Berberich, to their mother, Magdalena Berberich, in accordance with the terms and conditions of said will; and that on December 15, 1931, the said Magdalena Berberich transferred said funds to this defendant by virtue of a power of attorney, which became necessary because of the very infirm and invalided condition of the said Magdalena Berberich. That the use of said moneys was necessary in order to maintain the domestic and physical expenses of the said Magdalena Berberich until the time of her death on October 18, 1934, at which time the amount remaining therein was about \$9,224.21, and that on January 30, 1935, said account was closed and all of said funds withdrawn. That on February 1, 1935, the above funds were divided between the five children of Robert and Magdalena Berberich, except the interest of Joseph A. Berberich was paid as follows: \$500.00 to this defendant as reimbursement to her for moneys spent on Richard Schaefer Berberich, a minor, and son of the defendant Joseph A. Berberich, in an effort to cause said minor's recovery from a nervous breakdown, \$100.00 to this defendant's uncle, William J. Walter for repairs to certain real estate in which the defendant, Joseph A. Berberich had a life estate, and the balance \$2,498.30 was paid to Mary Catherine Lindenau as a refund to her for moneys advanced by her from her personal earnings for the support, maintenance and education of her younger brother, John William Berberich, who was a victim of acute asthma and was compelled to remove and live in New Mexico because of his chronic condition. That said money was distributed in accordance with the unpaid balances due the respective beneficiaries under said will of Robert Berberich, deceased.

Further answering said paragraphs this defendant avers that all of said transfers of said building association moneys were made in the due and proper administration of the estate of Robert Berberich, deceased, and in accordance with

the directions and provisions of his will. This defendant denies that any of said transfers were made with the intent and purpose of deceiving or defrauding any of the creditors from any right or interest which the said Joseph A. Berberich had under the will of Robert Berberich, deceased, or his mother, Magdalena Berberich. That at the time of the division of the said estate, the said Joseph A. Berberich had exhausted all his interest thereunder by sales and loans, also advancements therefrom.

19 8. In answer to paragraph (11) this defendant tenders herself ready and willing to offer all information in support of the allegations and averments of this answer, and to include therewith all documentary evidence appertaining thereto.

WHEREFORE having fully answered said bill of complaint this defendant prays that she be dismissed hence with her reasonable costs.

MAY BERBERICH.

City of Washington, }
District of Columbia. } ss.:

Personally appeared MAY BERBERICH who being first duly sworn does depose and say that she has read the foregoing answer by her subscribed; that the matters and facts therein stated of her personal knowledge are true, and those stated upon information and belief she believes to be true.

MAY BERBERICH.

Subscribed and sworn to before me this 22d day of January, A. D. 1938.

JOHN H. DAVIDSON,
Notary Public, D. C.

TOOMEY & TOOMEY,
Attorneys for Defendant,
By VINCENT L. TOOMEY,
1015 15th St. N. W.

DEFENDANT'S BERBERICH NO. 2 EXHIBIT No. 1.

20

H. L. RUST COMPANY

(Filed Jan. 22, 1938.)

Real Estate Loans and Insurance

1001 Fifteenth Street

Washington, D. C.

January 21, 1938.

C O P Y

November 8, 1932

Miss May Berberick,

In account with H. L. Rust Company.

To	Purchase of Lot 50, Square 2599 (1801 Kenyon Street, N. W.), ..	\$9,000.00	
	Preparing deed \$5.00 and notary fee on same, 50¢, ...	5.50	
	H. L. Rust Co., <i>in re</i> services sale of Lot 50, Square 2599, ...	5.00	
By	Deposit, ...		500.00
	Net proceeds of first deed of trust loan secured on Lot 50, Square 2599, ...		6,907.00
	Balance necessary to settle, ...		1,603.50
		<u>\$9,010.50</u>	<u>\$9,010.50</u>

GPP/M

**Answer of the Defendant, Mary Catherine Berberich,
Married Name Lindenau.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
HOLDING AN EQUITY COURT.

J. R. BEATON COMPANY, INC., A corporation,
411 Fifth Avenue, New York City,
N. Y.,

Plaintiff,

vs.

MAY BERBERICH, 1728 Lamont St., N. W.,
JOSEPH A. BERBERICH, 1801 Kenyon St.,
N. W., MARY CATHERINE BERBERICH, 1801
Kenyon St., N. W.,

Defendants.

(Equity 66129.)

(Filed April 16, 1940.)

The answer of the defendant, Mary Catherine Berberich, now married and whose name is now Lindenau, respectfully shows:

1. This defendant is without knowledge of the facts contained in Paragraph 1 of the complaint.

2. This defendant avers that allegations contained in Paragraph 2 do not relate to her and therefore need not be answered by her.

3. In answer to Paragraph 3 this defendant admits her citizenship as alleged therein, but states that she is now temporarily residing in the Philippine Islands where she has resided for several years last past. This defendant most emphatically denies that she, or she with the co-defendant May Berberich, has in her possession and control property belonging to the co-defendant, Joseph A. Berberich.

4. Answering Paragraph 4 of this complaint this defendant avers that she is without knowledge of the facts

therein contained, and she demands strict and accurate proof of the same.

30 5. This defendant again denies that she is holding title to any real estate or personal property belonging to her father, the co-defendant, Joseph A. Berberich, as alleged in Paragraph 5 of the complaint.

6. Answering Paragraph 6 this defendant admits that the property at 1801 Kenyon Street, N. W., was foreclosed at public auction on October 10, 1932, by Rust and Bowie, Trustees, and was sold to her aunt and co-defendant, May Berberich, for the sum of \$9,000.00. That said property was sold because her father was unable to pay the interest on the deed of trust and the taxes upon said property, her father having suffered serious financial reverses at that time completely exhausting him of all and any estate possessed by him. That the said May Berberich was able to purchase said property by giving back to Rust and Bowie, Trustees, a trust for \$7,000.00 and paying \$2,000.00 in cash. The cash sum of \$2,000.00 being contributed jointly by the two sisters of the said May Berberich, Annie Ruppert and Rose B. Ruppert. That at the time of the purchase of said real estate by May Berberich the said May Berberich made her home at said property, but subsequently found it necessary to move because of her mother's death. That the equity in said property was then transferred to this defendant to provide a home for the six children of Joseph A. Berberich. That she was selected because of her age and business experience. That the money paid by her aunts for the purchase of the property still remains unpaid and without any means of refunding the same. That no portion of said \$2,000.00 raised to purchase said equity was contributed or paid in or was the property of Joseph A. Berberich. That the money was raised by the aunts of the Berberich children in order to prevent the Berberich children from being put upon the streets after foreclosure of the property.

Further answering said Paragraph this defendant avers that any information received or procured by the plaintiff contrary to the above statement of fact is false and without foundation. This defendant denies that these several transaction were carried on and executed for the purpose of defrauding the plaintiff or any other creditor of the defendant, Joseph A. Berberich. That the same were conducted to provide a home for the Berberich children, as stated above, and for no other purpose.

7. Answering Paragraph 7 this defendant admits that her father received an estate by the curtesy in the properties mentioned and described in the complaint, but she avers that said estate by the curtesy was forfeited by her father when he failed and neglected to pay the taxes upon said real estate and make the necessary and proper repairs to the properties. That since the time of said forfeiture all the rents have been divided between the six children or applied to their support, and Joseph A. Berberich does not participate in any part thereof.

8. Answering Paragraph 8 this defendant states that the rental agents and occupants of the various properties enumerated in Paragraph 7 were all notified not to pay any more rental to Joseph A. Berberich, but in the future to pay this defendant in her own right and as custodian for her sisters and brothers. This action was taken when it was discovered that Joseph A. Berberich had permitted the taxes to go unpaid and the general upkeep of the property neglected. To have permitted the said Joseph A. Berberich to exercise any further dominion over the property would have meant that the remainder estate belonging to the children would have been lost or at least clouded.

This defendant denies that she received and collected the rents to defraud the plaintiff or any other creditor of the defendant, Joseph A. Berberich; but that she received the same as remainderman with the right of enjoyment accelerated because of the forfeiture of the life estate for

commissive and omissive waste and neglect by the defendant, Joseph A. Berberich.

9. Answering Paragraphs 9 and 10 this defendant
32 ant avers that the same do not relate to her, except that when the defendant, Joseph A. Berberich, received his portion of his father's estate represented by the moneys on deposit in the Washington Permanent Building Association on February 1, 1935, he, Joseph A. Berberich, refunded to this defendant the sum of \$2,498.30 advanced by the defendant in the personal medical care and attention given to her younger brother, John William Berberich, who was a victim of acute asthma and was compelled to live in New Mexico because of his chronic condition. Beyond this transaction this defendant is without knowledge of the allegations contained in said Paragraphs, but she most emphatically denies receiving and holding any property for her father, Joseph A. Berberich, in order to conceal the ownership of the said Joseph A. Berberich and to prevent his creditors from reaching the same.

10. Answering Paragraph 11 this defendant tenders herself ready to offer to the defendant any assistance in proof of the facts set forth in this answer, as well as her willingness to show and disclose to the Court a full and complete explanation of the attending facts.

Wherefore having fully answered said complaint this defendant prays that she be dismissed hence with her reasonable costs.

MARY CATHERINE LINDENAU.

VINCENT L. TOOMEY,
1015 15th St. N. W.,
Washington, D. C.,
Attorney for Defendant,

City of Baguio Mtn. Prov., }
 In the Philippine Islands. } ss.:

Personally appeared before me MARY CATHERINE LINDENAU, who being first duly sworn does depose and say that she is the defendant named in the foregoing answer; that the matters and facts therein stated of her personal knowledge are true and those stated upon information and belief she believes to be true.

MARY CATHERINE LINDENAU.

Subscribed and sworn to before me this 8th day of April, A. D. 1940.

ERIGEIO PLATA,
Notary Public,
 Until Dec. 31, 1940.

Notarial Register
 No. 439, Page 42
 Book 42 Series 1940.

119

Rule to Show Cause.

IN THE SUPREME COURT OF THE DISTRICT OF
 COLUMBIA HOLDING AN EQUITY COURT.

LAWRENCE J. MILLS, 430 5th Street, N. W.,
 Washington, D. C.,

Plaintiff,

vs.

JOSEPH A. BERBERICH, MARY C. BERBERICH,
 ROSE M. BERBERICH, JOHN W. M. BERBERICH,
 WALTER F. BERBERICH, CHARLES
 E. BERBERICH, RICHARD S. BERBERICH,
 1801 Kenyon Street, N. W., and J. R.
 BEATON Co., Inc., A foreign corporation,
Defendants.

Equity No.
 61456.

Filed May
 15, 1936.

Upon consideration of the petition of Lawrence J. Mills, filed herein on the 15th day of May, 1936, it is by the Court, this 15th day of May, 1936,

ADJUDGED, ORDERED and DECREED, that the defendants, Joseph A. Berberich, Mary C. Berberich, Rose M. Berberich, John M. Berberich, Walter F. Berberich, Charles E. Berberich, Richard S. Berberich and J. R. Beaton Co., Inc., a corporation, and each of them show cause, if any they have, why the prayers of said petition should not be granted on or before the 26th day of May, 1936, at 10:00, provided, a copy of this rule be served upon each of the said defendants on or before the 16th day of May, 1936.

JAMES M. PROCTOR,
Justice.

(Seal)

A True Copy.

TEST:

FRANK E. CUNNINGHAM, Clerk,

By HARRY M. HULL,
Asst. Clerk.

114

Bill of Interpleader.

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA HOLDING AN EQUITY COURT.

(Filed May 15, 1936.)

LAWRENCE J. MILLS, 430 5th Street, N. W.,
Washington, D. C.,

Plaintiff,

vs.

JOSEPH A. BERBERICH, MARY C. BERBERICH,
ROSE M. BERBERICH, JOHN W. M. BERBERICH,
WALTER F. BERBERICH, CHARLES
E. BERBERICH, RICHARD S. BERBERICH,
1801 Kenyon Street, N. W., and J. R.
BEATON Co., Inc., A foreign corporation,
Defendants.

Equity No. 61456.

To the Honorable the Supreme Court of the District of
Columbia, holding an Equity Court:

The plaintiff, Lawrence J. Mills, respectfully represents to this Honorable Court as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia and brings this suit in his own right.

2. That the defendants, Joseph A. Berberich, Mary C. Berberich, Rose M. Berberich, John Wm. Berberich, Walter P. Berberich, Charles E. Berberich and Richard S. Berberich, are citizens of the United States and residents of the District of Columbia; that the defendant, J. R. Beaton Co., Inc., is a foreign corporation; that all the defendants are sued as claimants of a certain fund now in the hands of the plaintiff as will hereinafter more particularly appear.

3. That plaintiff has for more than twenty years been the rental agent for Rose Berberich, wife of the defendant, Joseph A. Berberich, whom plaintiff is advised and believes was the legal owner of the following parcels of real estate, namely:

115	643 L Street, S. W.
	641 L Street, S. W.
	1619 Third Street, N. W.
	1621 Third Street, N. W.
	1623 Third Street, N. W.
	1612 Reeves Ct. N. W.
	1610 Reeves Ct. N. W.
	511 L Street, N. W.
	909 Euclid Street, N. W.

4. That plaintiff is advised and believes and therefore avers that upon the death of the said Rose Berberich some years ago the defendant, Joseph A. Berberich, her husband, became a tenant by courtesy of the aforementioned real estate.

5. That the said Rose Berberich upon her death left as her heirs at law the following children who are named

as defendants in this suit, namely: Mary C. Berberich, Rose M. Berberich, John Wm. Berberich, Walter F. Berberich, Charles E. Berberich, William S. Berberich, all of whom plaintiff is informed and believes are entitled to the remainder interest in the above described properties of their deceased mother, Rose Berberich.

6. That plaintiff ever since the death of said Rose Berberich and up to the date of filing this suit has continued to operate as the rental agent for the above properties at the request of both Joseph A. Berberich and the other parties in interest herein.

7. That plaintiff is informed and believes and therefore avers that the defendant, Mary C. Berberich, one of the children of the aforesaid Rose Berberich, who holds a remainder interest in the above described properties, has paid all taxes due upon said properties from and including the year 1932 with the exception of one parcel; that said taxes were paid by her under protest and with her own personal funds, and that she holds tax deeds from the Commissioners of the District of Columbia for eleven parcels of real estate of said estate; that the taxes since 1932 to the twelfth and last parcel have been paid by an unknown party who has received a tax receipt therefor; that on or about the month of May, 1935, plaintiff was advised by the defendant, Mary C. Berberich, that the estate by courtesy theretofore vesting in the defendant, Joseph A. Berberich, had been forfeited by virtue of willful and permissive waste and failure to pay taxes and make necessary repairs to said property and consequently the account reflecting
 116 the rental income from said property was changed from defendant, Joseph A. Berberich, to defendant, Mary C. Berberich, his daughter, and avers that thenceforth all checks for rentals were made out to said Mary C. Berberich and were transmitted to her in accordance with her instructions.

8. That a judgment was rendered against the defendant, Joseph A. Berberich in the Supreme Court of the District of Columbia in case number 83836 in favor of the J. R. Beaton Co., Inc., a foreign corporation, in the sum of \$2358.19, from May 23rd, 1931, with interest at 6% on \$2353.17 from May 23rd, 1931.

9. That on the 23rd day of March, 1936, the J. R. Beaton Co., Inc., a foreign corporation, pursuant to its judgment obtained against defendant, Joseph A. Berberich in the above entitled cause, issued a garnishment against the plaintiff for the purpose of attaching certain goods, chattels and credits of the defendant, Joseph A. Berberich, that is to say, any rents collected by plaintiff from tenants occupying various properties above described formerly under control of said defendant, Joseph A. Berberich by virtue of his tenancy by courtesy as aforesaid; that plaintiff in answering said garnishment stated that he had collected from tenants occupying the properties of the Berberich estate at that time the sum of \$249.94 in his capacity as rental agent of said properties as aforesaid.

10. That the said defendant, Joseph A. Berberich notwithstanding claims of the other defendants also claims the right to the fund in the hands of plaintiff and to future rents collected from tenants occupying the above described premises.

11. That plaintiff avers that the defendant, Mary C. Berberich, claims right to any and all rents collected from said properties by virtue of tax deeds issued to her as aforesaid and also because of her remainder interest in same. That the said J. R. Beaton Company, Inc., a foreign corporation, also claims right to said rents under its garnishment issued against the plaintiff pursuant to its judgment against said Joseph A. Berberich; that plaintiff avers that he has no interest in or to the said rent money collected by him or any part thereof and no connection with any

of the defendants, or anyone else interested in the
 117 controversy except lawfully and properly to execute
 the several writs by this Honorable Court, but that
 all the defendants are claiming right and title to said monies
 and to all future collections of rent from any and all of the
 above described properties; that the plaintiff is ready and
 willing to deliver the said fund or any future rents collected
 from said properties to any person or persons that the
 Court may at any time direct, relieving him from further
 obligation in the premises, but by reason of the foregoing
 facts and circumstances plaintiff is doubtful as to the rights
 of the respective defendants and as to those who are en-
 titled to rents from said properties now on hand or forth-
 coming in the future.

WHEREFORE, the premises considered, petitioner re-
 spectfully prays:

1. That the said defendants, or each of them, be served
 with process and be required to answer the exigencies of
 this Bill of Interpleader.

2. That the defendants *pendente lite* be restrained from
 issuing any attachment or garnishment against either the
 plaintiff by reason of the collection of rents from tenants
 of the Berberich Estate properties or from any tenant oc-
 cupying the above described properties for any rent due
 to the rental agent thereof.

3. That the plaintiff be permitted *pendente lite* to rent
 and to collect the rents from tenants occupying said prop-
 erties of the Berberich Estate and to retain and hold the
 same pending the termination of the rights of the respective
 parties to this litigation.

4. That upon delivery of the amount of the fund now in
 the hands of plaintiff in the sum of \$30.16 to such person
 or persons as the Court may direct or upon paying the
 same to such person or persons as the Court may direct the

plaintiff be thereupon freed of any liability to the defendants or either of them in relation thereto.

(s) LAWRENCE J. MILLS.

MARTIN F. O'DONOGHUE,
LAWRENCE J. MILLS, JR.,
Attorneys for Plaintiff,
900 Investment Building,
District 1316.

118 District of Columbia, ss.:

LAWRENCE J. MILLS, being first duly sworn according to law, deposes and says, that he has read the foregoing petition by him subscribed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge are true and those stated on information and belief he believes to be true.

LAWRENCE J. MILLS.

Subscribed and sworn to before me this 15th day of May,
A. D. 1936.

HARRY HULL,
Notary Public, D. C.

119

Rule to Show Cause.**IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA HOLDING AN EQUITY COURT.**

LAWRENCE J. MILLS, 430 5th Street, N. W.,
Washington, D. C.,

Plaintiff,

vs.

JOSEPH A. BERBERICH, MARY C. BERBERICH,
ROSE M. BERBERICH, JOHN W. M. BER-
BERICH, WALTER F. BERBERICH, CHARLES
E. BERBERICH, RICHARD S. BERBERICH,
1801 Kenyon Street, N. W., and J. R.
BEATON Co., Inc., A foreign corporation,
Defendants.

Equity No. 61456.

Filed 15th
May, 1936.

Upon consideration of the petition of Lawrence J. Mills, filed herein on the 15th day of May, 1936, it is by the Court, this 26th day of May, 1936,

ADJUDGED, ORDERED AND DECREED, that the defendants, Joseph A. Berberich, Mary C. Berberich, Rose M. Berberich, John M. Berberich, Walter F. Berberich, Charles E. Berberich, Richard S. Berberich and J. R. Beaton Co., Inc., a foreign corporation, and each of them show cause, if any they have, why the prayers of said petition should not be granted on or before the 8th day of June, 1936, at 10:00, provided, a copy of this rule be served upon each of the said defendants on or before the 4th day of June, 1936.

O. R. LUHRING,
Justice.

(Seal)

A True Copy.

TEST:

FRANK E. CUNNINGHAM, *Clerk,*

RICHARD J. KUKLAND,

Asst. Clerk.

121

Plea in Abatement.

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

HOLDING AN EQUITY COURT.

LAWRENCE J. MILLS, 450 5th Street, N. W.,	}	Equity No. 61,456.
<i>Plaintiff,</i>		
vs.		
JOSEPH A. BERBERICH, <i>et al.</i> ,	}	Filed June 8, 1936.
<i>Defendants.</i>		

The defendant, J. R. Beaton Corporation, Inc., a New York corporation, appearing specially for the purpose of this plea and none other, says that at the time of the commencement of the above entitled cause and at the time of service of process in said cause upon Arthur J. Hilland as its supposed agent, and for a long time prior thereto, it was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office at 411 Fifth Avenue, City of New York, State of New York, and that at the time the subpoena to answer, rule to show cause, and bill of complaint were served upon said Arthur J. Hilland, the defendant was not doing business in the District of Columbia and had no agent, person, firm, or corporation conducting its business in the District of Columbia, and had no place of business in the District of Columbia, and had no officer, agent, or employee in the District of Columbia upon whom service of process could be had; that the said Arthur J. Hilland was not then or at any other time its agent in the District of Columbia or conducting its business therein and was not authorized to accept

122 service of process for it, and was not then or at any other time authorized to represent it in any matter or thing except in the cause entitled "J. R. Beaton Company, Inc., a corporation v. Joseph A. Berberich," Law

No. 83,836, in the Supreme Court of the District of Columbia, and this the defendant is ready to verify.

WHEREFORE, defendant prays judgment of the said subpoena, rule, and bill, and the service thereof, and that the same may be quashed.

J. R. BEATON COMPANY, INC.,

By: (s) David J. Hill,

Its Secy. & Treasurer,

*Appearing specially for the purpose of
this plea and none other.*

(s) ARTHUR J. HILLAND,
Shoreham Building,
Amicus Curiae.

123 **Affidavit of David J. Hill In Support of Plea
In Abatement.**

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

HOLDING AN EQUITY COURT

LAWRENCE J. MILLS,

Plaintiff,

vs.

JOSEPH A. BERBERICH, *et al.,*

Defendant.

Equity No.
61,456.

Filed
June 8, 1936.

State of New Jersey, }
County of Hudson. } ss.:

I, DAVID J. HILL, being first duly sworn, on oath say that I am Secy. & Treasurer of J. R. Beaton Company, Inc., a New York corporation, named defendant in the above entitled cause, and am authorized to and make this affidavit in support of the foregoing plea in abatement, and appear

herein specially for the purpose of said plea and none other; that I have read the said plea by me subscribed and know the contents thereof, and that the same is true in substance and in fact; that at the time of the commencement of the above entitled cause and for a long time prior thereto, said J. R. Beaton Company, Inc., was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office at 411 Fifth Avenue, City of New York, State of New York, and that at the time the subpoena to answer, rule to show cause, and bill of complaint were served upon Arthur J.

Hilland as its supposed agent, the defendant was not
124 doing business in the District of Columbia and had

no agent, person, firm, or corporation conducting its business in the District of Columbia, and had no place of business in the District of Columbia, and had no officer, agent or employee in the District of Columbia upon whom service of process could be had; that the said Arthur J. Hilland was not then or at any other time its agent in the District of Columbia or conducting its business therein and was not authorized to accept service of process for it, and was not then or at any other time authorized to represent it in any matter or thing except in the cause entitled "J. R. Beaton Company, Inc., a corporation v. Joseph A. Berberich," Law No. 83,836, in the Supreme Court of the District of Columbia, and this the defendant is ready to verify.

(s) DAVID J. HILL,

*Appearing specially for the purpose
of said plea in abatement and none
other.*

Subscribed and sworn to before me this 6th day of June,
1936.

(s) JOHN J. O'CONNELL,

*Notary Public in and for the County
of Hudson, State of New Jersey.*

(Seal)

My commission expires Feb. 2, 1938.

125 **Defendants' Answer to Bill of Interpleader
and Rule to Show Cause.**

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

HOLDING AN EQUITY COURT.

LAWRENCE J. MILLS, 430 5th Street, N. W.,
Plaintiff,

vs.

JOSEPH A. BERBERICH, MARY C. BERBERICH,
ROSE M. BERBERICH, JOHN W. M. BER-
BERICH, WALTER F. BERBERICH, CHARLES
E. BERBERICH, RICHARD S. BERBERICH,
1801 Kenyon Street, N. W., J. R. BEATON
Co., Inc., a foreign corporation,
Defendants.

Equity No.
61,456.

Filed
June 8, 1936.

For answer to the Rule to Show Cause and to the Bill of Interpleader filed herein, the defendants, Mary C. Berberich, Rose M. Berberich, John W. M. Berberich, Walter F. Berberich, Charles E. Berberich and Richard S. Berberich respectfully represent to this Honorable Court as follows:

1. Defendants admit all the allegations contained in paragraphs 1, 2, 3, 4, 5, 6 of the Bill of Interpleader.

2. For answer to paragraph 7 defendants state that commencing with the year 1932 Joseph A. Berberich failed to pay the taxes on any of the property; that he permitted the property to suffer from the want of repairs; that he has permitted several of the pieces of property to become dilapidated; that by reason of his failure to pay taxes the said property was advertised for sale by the Government of the District of Columbia; that Mary C. Berberich purchased said property from the District of Columbia in the years 1935 and 1936, and actually received deeds from the Commissioners of the District of Columbia to all of

126 said property; that said Mary C. Berberich and her brothers and sisters are entitled to the remainder interest in all of said property, and said Mary C. Berberich purchased said property in order to conserve and safeguard their remainder interest therein; that the life tenant by the curtesy, Joseph A. Berberich, has numerous individual judgments against him which total in the aggregate of approximately \$80,000.00; that one of these judgment creditors, J. R. Beaton Co., Inc., has caused to be issued out of the Supreme Court in Case No. 83836 numerous garnishments, directed to the plaintiff herein and to the several tenants of the aforementioned property; that the defendant, Joseph A. Berberich is totally incapable of preserving the remainder estate of his children in and to said property; that Mary C. Berberich notified Lawrence J. Mills that she had the tax deeds to the property and that any estate in Joseph A. Berberich in said property had been forfeited; that by reason of the failure to pay taxes, make repairs and by reason of the seizure of the rents, the property is losing its value, and is becoming uninhabitable, and several parcels are already unrentable; that the children are unable to prevent the property from becoming dilapidated without the rents derived therefrom.

3. Defendants admit all the allegations contained in paragraphs 8 and 9.

4. For answer to paragraph 10 defendants state that Joseph A. Berberich, acknowledging his inability to carry said property, instructed the plaintiff, Lawrence J. Mills, to pay the rental from said property to Mary C. Berberich in May, 1935.

5. For answer to paragraph 11 defendants state that they are advised by counsel that they are entitled to a decree of this Court forfeiting the estate of Joseph A. Berberich in said property, and establishing in them an absolute title thereto.

6. Defendants state to this Honorable Court that Richard S. Berberich, one of the defendants herein entitled to the remainder interest in said property, is under the age of 21 years, and is confined to St. Elizabeth's Hospital having been adjudicated of unsound mind by order of this Honorable Court.

WHEREFORE, the premises considered, and the respondents having fully answered said Bill of Complaint, pray as follows:

1. That a guardian *ad litem* be appointed by this Honorable Court, if the exigencies of the case so demand, to represent the interests of Richard S. Berberich, minor, and lunatic.

2. That the Court pass a decree formally forfeiting the estate by the curtesy heretofore enjoyed by Joseph A. Berberich, and that the Court further decree an absolute fee simple estate in Mary C. Berberich, Rose M. Berberich, John W. M. Berberich, Walter F. Berberich, Charles E. Berberich and Richard S. Berberich, susceptible of immediate enjoyment.

3. That Mary C. Berberich have a money decree for such monies as she advanced for the upkeep and preservation of said property, as against her co-owners.

4. That all other claims against said property or the income therefrom be dismissed.

5. For such other and further relief as to the Court may seem just.

MARY C. BERBERICH.

District of Columbia, ss.:

I, MARY C. BERBERICH, being first duly sworn, upon oath depose and say that I have read the foregoing bill of complaint by me subscribed, and know the contents thereof; that the matters and things stated as of my own knowledge are true, and those stated upon information and belief

I believe to be true; that the same is executed on behalf of the other co-defendants named herein.

MARY C. BERBERICH.

Subscribed and sworn to before me this 11th day of June, 1936.

JOHN H. DAVIDSON,
Notary Public, D. C.

JOSEPH C. SURACI,
1015 15th Street, N. W.,
Attorney for Defendants.

128 **Amended Bill of Interpleader.**

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

HOLDING AN EQUITY COURT.

LAWRENCE J. MILLS, 430 5th Street, N. W.,
Washington, D. C.,

Plaintiff,

vs.

JOSEPH A. BERBERICH, MARY C. BERBERICH,
ROSE M. BERBERICH, JOHN W. M. BER-
BERICH, WALTER F. BERBERICH, CHARLES
E. BERBERICH, RICHARD S. BERBERICH,
1801 Kenyon Street, N. W., and J. R.
BEATON Co., Inc., a foreign corporation,
Defendants.

Equity No.
61456.

Filed Jun. 18,
1936.

To the Honorable the Supreme Court of the District of Col-
umbia, holding an Equity Court:

The plaintiff, Lawrence J. Mills, respectfully represents
to this Honorable Court as follows:

1. That he is a citizen of the United States and a resi-
dent of the District of Columbia and brings this suit in his
own right.

2. That the defendants, Joseph A. Berberich, Mary C. Berberich, Rose M. Berberich, John Wm. Berberich, Walter F. Berberich, Charles E. Berberich and Richard S. Berberich, are citizens of the United States and residents of the District of Columbia; that the defendant, J. R. Beaton Co., Inc., is a foreign corporation; that all the defendants are sued as claimants of a certain fund now in the hands of the plaintiff as will hereinafter more particularly appear.

3. That plaintiff has for more than twenty years been the rental agent for Rose Berberich, wife of the defendant, Joseph A. Berberich, whom plaintiff is advised and believes was the legal owner of the following parcels of real estate, namely:

129	643 L Street, S. W.
	641 L Street, S. W.
	1619 Third Street, N. W.
	1621 Third Street, N. W.
	1623 Third Street, N. W.
	1612 Reeves Ct. N. W.
	1610 Reeves Ct. N. W.
	511 L Street, N. W.
	909 Euclid Street, N. W.

4. That plaintiff is advised and believes and therefore avers that upon the death of the said Rose Berberich some years ago the defendant, Joseph A. Berberich, her husband, became a tenant by curtesy of the aforementioned real estate.

5. That the said Rose Berberich upon her death left as her heirs at law the following children who are named as defendants in this suit, namely: Mary C. Berberich, Rose M. Berberich, John Wm. Berberich, Walter F. Berberich, Charles E. Berberich, William S. Berberich, all of whom plaintiff is informed and believes are entitled to the remainder interest in the above described properties of their deceased mother, Rose Berberich.

6. That plaintiff ever since the death of said Rose Berberich and up to the date of filing this suit has continued to operate as the rental agent for the above properties at the request of both Joseph A. Berberich and the other parties in interest herein.

7. That plaintiff is informed and believes and therefore avers that the defendant, Mary C. Berberich, one of the children of the aforesaid Rose Berberich, who holds a remainder interest in the above described properties, has paid all taxes due upon said properties from and including the year 1932 with the exception of one parcel; that said taxes were paid by her under protest and with her own personal funds, and that she holds tax deeds from the Commissioners of the District of Columbia for eleven parcels of real estate of said estate; that the taxes since 1932 to the twelfth and last parcel have been paid by an unknown party who has received a tax receipt therefor; that on or about the month of May, 1935, plaintiff was advised by the defendant, Mary C. Berberich, that the estate by curtesy theretofore vesting in the defendant, Joseph A. Berberich, had been forfeited by virtue of willful and permissive waste and failure to pay taxes and make necessary repairs to said property and consequently the account reflecting the rental income

130 from said property was changed from defendant, Joseph A. Berberich, to defendant, Mary C. Berberich, his daughter, and avers that thenceforth all checks for rentals were made out to said Mary C. Berberich and were transmitted to her in accordance with her instructions.

8. That a judgment was rendered against the defendant, Joseph A. Berberich, in the Supreme Court of the District of Columbia in case number 83836 in favor of the J. R. Beaton Co., Inc., a foreign corporation, in the sum of \$2358.19, from May 23rd, 1931, with interest at 6% on \$2353.17 from May 23rd, 1931.

9. That on the 23rd day of March, 1936, the J. R. Beaton Co., Inc., a foreign corporation, pursuant to its judgment obtained against defendant, Joseph A. Berberich, in the above entitled cause, issued a garnishment against the plaintiff for the purpose of attaching certain goods, chattels and credits of the defendant, Joseph A. Berberich, that is to say, any rents collected by plaintiff from tenants occupying various properties above described formerly under control of said defendant, Joseph A. Berberich, by virtue of his tenancy by curtesy as aforesaid; that plaintiff in answering said garnishment stated that he had collected from tenants occupying the properties of the Berberich estate at that time the sum of \$249.94 in his capacity as rental agent of said properties as aforesaid.

10. That the plaintiff has in addition to the sum of \$249.94 above stated in answer to the garnishment of the Beaton Company, an additional sum of \$190.88, collected as rental from the above described real estate not subject to any attachment or garnishment.

11. That the said defendant, Joseph A. Berberich, notwithstanding claims of the other defendants also claims the right to the fund in the hands of plaintiff and to future rents collected from tenants occupying the above described premises.

12. That plaintiff avers that the defendant, Mary C. Berberich, claims right to any and all rents collected from said properties by virtue of tax deeds issued to her as aforesaid and also because of her remainder interest in same. That the said J. R. Beaton Company, Inc., a foreign corporation, also claims right to said rents under its garnishment issued against the plaintiff pursuant to its judgment against said Joseph A. Berberich; that plaintiff avers that he has no interest in or to the said rent money collected by him or any part thereof and no connection with any of the defendants, or anyone else interested in the contro-

131 versy except lawfully and properly to execute the several writs by this Honorable Court, but that all the defendants are claiming right and title to said monies and to all future collections of rent from any and all of the above described properties; that the plaintiff is ready and willing to deliver the said fund or any future rents collected from said properties to any person or persons that the Court may at any time direct, relieving him from further obligation in the premises, but by reason of the foregoing facts and circumstance plaintiff is doubtful as to the rights of the respective defendants and as to those who are entitled to rents from said properties now on hand or forthcoming in the future.

WHEREFORE, the premises considered, petitioner respectfully prays:

1. That the said defendants, or each of them, be served with process and be required to answer the exigencies of this Bill of Interpleader.

2. That the defendants *pendente lite* be restrained from issuing any attachment or garnishment against either the plaintiff by reason of the collection of rents from tenants of the Berberich Estate properties or from any tenant occupying the above described properties for any rent due to the rental agent thereof.

132 3. That the plaintiff be permitted *pendente lite* to rent and to collect the rents from tenants occupying said properties of the Berberich Estate and to retain and hold the same pending the termination of the rights of the respective parties to this litigation.

4. That upon delivery of the amount of the fund now in the hands of the plaintiff in the sum of \$249.94 to such person or persons as the court may direct the plaintiff, the plaintiff be thereupon freed of any liability to the defendant or either of them in relation thereto.

5. That those defendants residing beyond the District

of Columbia may be served as provided by Section 378 (page 341) of the new Code of Law for the District of Columbia; and in the event any of said defendants cannot be found, then service by publication to be substituted.

(s) LAWRENCE J. MILLS.

MARTIN F. O'DONOGHUE,
LAWRENCE J. MILLS, JR.,
Attorneys for Plaintiff,
900 Investment Building,
District 1316.

133 District of Columbia, ss.:

LAWRENCE J. MILLS, being first duly sworn according to law, deposes and says, that he has read the foregoing petition by him subscribed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge are true and those stated on information and belief he believes to be true.

(s) LAWRENCE J. MILLS.

Subscribed and sworn to before me this 18th day of June, A. D. 1936.

(s) IDELL E. BURTON,
Notary Public, D. C.

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Order.IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

LAWRENCE J. MILLS,

Plaintiff,

v.

J. R. BEATON COMPANY, INC., a corporation,
*et al.,**Defendants.*

Equity No. 61,456.

Filed
July 10, 1936.

Upon consideration of the plea in abatement to the service of process and the affidavit in support thereof, filed herein the 8th day of June, 1936, and it appearing to the court that answer thereto has not been filed and the time so to do has expired, it is, by the court, this 10th day of July, A. D. 1936,

ADJUDGED, ORDERED AND DECREED that service of the subpoena to answer, rule to show cause and bill of complaint upon Arthur J. Hilland as agent and attorney for the defendant, J. R. Beaton Company, Inc., a corporation, be and the same is hereby quashed.

JESSE C. ATKINS,
Justice.

Approved:

LAWRENCE J. MILLS, JR.,
Attorney for Plaintiff.

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Order.

IN THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA.

HOLDING AN EQUITY COURT.

LAWRENCE J. MILLS, 430 5th Street, N. W.,
Washington, D. C.,*Plaintiff,*

vs.

JOSEPH A. BEBBERICH, MARY C. BERBERICH,
ROSE M. BERBERICH, JOHN W. M. BER-
BERICH, WALTER F. BERBERICH, CHARLES
E. BERBERICH, RICHARD S. BERBERICH,
1801 Kenyon Street, N. W. and J. R.
BEATON Co., Inc., a foreign corporation,
Defendants.

Equity No. 61456.

Filed Aug.
5, 1936.

Upon consideration of the motion of Martin F. O'Donoghue and Lawrence J. Mills, Jr., attorneys for plaintiff, attorneys for defendants consenting, it is by the court this 5th day of August, 1936,

ORDERED, that the above entitled cause be and the same is hereby dismissed.

/s/ JENNINGS BAILEY.

Consented to:

/s/ TOOMEY & TOOMEY,
Attorneys for Joseph A. Berberich./s/ JOSEPH C. SURACI,
Attorney for May C. Berberich, et al.

136 **Defendants' Counterdesignation of Record.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

J. R. BEATON COMPANY, INC., a corporation,
Plaintiff,

vs.

MAY BERBERICH, *et al.*,

Defendants.

} Equity No. 66129.

Now comes May Berberich, Joseph A. Berberich and Mary Catherine Berberich (now Mary Catherine Lindenau), appellees in the above entitled action, and designate the parts of the record which they desire to have included in the transcript, said parts being additional to those parts heretofore designated by the appellant, namely:

1. The proceeding included in Equity Cause No. 61456, to wit:

- (a) Bill of Interpleader filed May 15, 1936.
- (b) Rule to Show Cause of May 15, 1936.
- (c) Rule to Show Cause of May 26, 1936.
- (d) Plea in Abatement in behalf of J. R. Beaton Company, Inc., filed June 8, 1936, and Affidavit in support thereof.
- (e) Defendants' Answer filed June 12, 1936.
- (f) Amended Bill of Interpleader.
- (g) Order of July 10, 1936.
- (h) Order of August 5, 1936.

137 2. This counterdesignation.

VINCENT L. TOOMEY,
1015 Fifteenth Street, N. W.,
Attorney for Defendants.

Service of a copy of the foregoing counterdesignation of record is hereby acknowledged this 17th day of December, A. D. 1941.

ARTHUR J. HILLAND,
DEWITT S. HYDE,
Shoreham Building,
Attorneys for Plaintiff.